before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) the President has determined that Ecuador does not satisfy the requirements set forth in section 3202(c) of this title for being designated as a beneficiary country; and

(B) in making that determination, the President has taken into account each of the factors set forth in section 3202(d) of this title; and

(3) remain in effect with respect to Bolivia after June 30, 2009, except that duty-free treatment and other preferential treatment under this chapter shall remain in effect with respect to Bolivia during the period beginning on July 1, 2009, and ending on December 31, 2009, only if the President reviews the criteria set forth in section 3202 of this title, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) the President has determined that Bolivia satisfies the requirements set forth in section 3202(c) of this title for being designated as a beneficiary country; and

(B) in making that determination, the President has taken into account each of the factors set forth in section 3202(d) of this title.

(b) Reports

On or before June 30, 2009, the President shall make determinations pursuant to subsections (a)(2)(A) and (a)(3)(A) and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on—

(1) such determinations; and

(2) the reasons for such determinations.

(Pub. L. 102–182, title II, §208, Dec. 4, 1991, 105 Stat. 1244; Pub. L. 107–210, div. C, title XXXI, §3104(a), Aug. 6, 2002, 116 Stat. 1034; Pub. L. 109–432, div. D, title VII, §7002, Dec. 20, 2006, 120 Stat. 3194; Pub. L. 110–42, §1, June 30, 2007, 121 Stat. 235; Pub. L. 110–191, §2(a), Feb. 29, 2008, 122 Stat. 646; Pub. L. 110–436, §1(a), Oct. 16, 2008, 122 Stat. 4976; Pub. L. 111–124, §2(a), Dec. 28, 2009, 123 Stat. 3484; Pub. L. 111–344, title II, §201(a), (b), Dec. 29, 2010, 124 Stat. 3616.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–344, §201(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''remain in effect with respect to Colombia or Peru after December 31, 2010;''.

Subsec. (a)(2). Pub. L. 111–344, §201(b), substituted ''February 12, 2011'' for ''December 31, 2010'' in introductory provisions.

2009—Subsec. (a)(1), (2). Pub. L. 111–124 substituted ''December 31, 2010'' for ''December 31, 2009''.

2008—Pub. L. 110–436 amended section generally. Prior to amendment, text read as follows: ''No duty-free treatment or other preferential treatment extended to beneficiary countries under this chapter shall remain in effect after December 31, 2008.''

Pub. L. 110–191 substituted ''December 31, 2008'' for ''February 29, 2008''.

2007—Pub. L. 110–42 struck out subsec. (a) designation and heading at beginning of section, substituted ''No'' for ''Subject to subsection (b), no'' and ''February 29, 2008'' for ''June 30, 2007'', and struck out subsec. (b), which provided for certain conditional extensions.

2006—Pub. L. 109–432 designated existing provisions as subsec. (a), inserted heading, substituted ''Subject to subsection (b), no'' for ''No'' and ''June 30, 2007'' for ''December 31, 2006'', and added subsec. (b).

2002—Pub. L. 107–210 substituted ''Termination of preferential treatment'' for ''Effective date and termination of duty-free treatment'' in section catchline and amended text generally, substituting provisions establishing a termination date of Dec. 31, 2006, for preferential treatment under this chapter for provisions designated subsecs. (a) and (b) establishing an effective date of Dec. 4, 1991, for this chapter and a termination date 10 years later for duty-free treatment under this chapter.

RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS

Pub. L. 107–210, div. C, title XXXI, §3104(b), Aug. 6, 2002, 116 Stat. 1034, provided that:

''(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (3), the entry—

''(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade Preference Act (19 U.S.C. 3201 et seq.) would have applied if the entry had been made on December 4, 2001, and

''(B) that was made after December 4, 2001, and before the date of the enactment of this Act [Aug. 6, 2002],

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

''(2) ENTRY.—As used in this subsection, the term 'entry' includes a withdrawal from warehouse for consumption.

''(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

''(A) to locate the entry; or

''(B) to reconstruct the entry if it cannot be located.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.]

CHAPTER 21—NORTH AMERICAN FREE TRADE

Sec.

§ 3301. Definitions

For purposes of this Act:

(1) Agreement

The term ''Agreement'' means the North American Free Trade Agreement approved by the Congress under section 3311(a) of this title.

(2) HTS

The term ''HTS'' means the Harmonized Tariff Schedule of the United States.

(3) Mexico

Any reference to Mexico shall be considered to be a reference to the United Mexican States.

(4) NAFTA country

Except as provided in section 3332 of this title, the term ''NAFTA country'' means—

(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

(5) International Trade Commission

The term ''International Trade Commission'' means the United States International Trade Commission.

(6) Trade Representative

The term ''Trade Representative'' means the United States Trade Representative.

(Pub. L. 103–182, § 2, Dec. 8, 1993, 107 Stat. 2060.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The North American Free Trade Agreement, referred to in par. (1), is not set out in the Code.

The Harmonized Tariff Schedule of the United States, referred to in par. (2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

SHORT TITLE

Section 1(a) of Pub. L. 103–182 provided that: ''This Act [see Tables for classification] may be cited as the 'North American Free Trade Agreement Implementation Act'.''

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, NORTH AMERICAN FREE TRADE AGREEMENT

§ 3311. Approval and entry into force of North American Free Trade Agreement

(a) Approval of Agreement and statement of administrative action

Pursuant to section 2903 of this title and section 2191 of this title, the Congress approves—

(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) Conditions for entry into force of Agreement

The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as—

(1) the President—

(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

(Pub. L. 103–182, title I, §101, Dec. 8, 1993, 107 Stat. 2061.)

EFFECTIVE DATE; TERMINATION OF NAFTA STATUS

Section 109 of title I of Pub. L. 103–182 provided that: ''(a) EFFECTIVE DATES.—

''(1) IN GENERAL.—This title [enacting this subchapter and amending provisions set out as a note under section 2112 of this title] (other than the amendment made by section 107 [amending provisions set out as a note under section 2112 of this title]) takes effect on the date of the enactment of this Act [Dec. 8, 1993].

''(2) SECTION 107 AMENDMENT.—The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada [Jan. 1, 1994].

''(b) TERMINATION OF NAFTA STATUS.—During any period in which a country ceases to be a NAFTA country, sections 101 through 106 [enacting this section and sections 3312 to 3316 of this title] shall cease to have effect with respect to such country.''

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

A Presidential Memorandum on the Implementation of the North American Free Trade Agreement, dated Dec. 27, 1993, directing the Secretary of State to exchange notes with the Government of Canada and the Government of Mexico to provide for the entry into force of the Agreement on Jan. 1, 1994, is set out in 29 Weekly Compilation of Presidential Documents 2641, Jan. 3, 1994.

EX. ORD. NO. 12889. IMPLEMENTATION OF NORTH AMERICAN FREE TRADE AGREEMENT

Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) (the NAFTA Implementation Act) [see Short Title note set out under section 3301 of this title] and section 302 of title 3, United States Code, and in order to implement the North American Free Trade Agreement (NAFTA), it is hereby ordered:

SECTION 1. *Establishment of United States Section of the NAFTA Secretariat.* Pursuant to section 105(a) of the NAFTA Implementation Act [19 U.S.C. 3315(a)], a United States section of the NAFTA Secretariat shall be established within the Department of Commerce and shall carry out the functions set out in that section.

SEC. 2. *Acceptance by the President of Panel and Committee Decisions.* Pursuant to subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. 1516a(g)(7)(B), in the event that the provisions of that subparagraph take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

SEC. 3. *Implementation of Safeguard Provisions for Textile and Apparel Goods.* Pursuant to section 201 of the NAFTA Implementation Act [19 U.S.C. 3331], the Committee for the Implementation of Textile Agreements (the Committee) shall take such action as necessary to implement the bilateral safeguard provisions (tariff actions) set out in section 4 of Annex 300–B of the NAFTA. The United States Customs Service shall take such actions to carry out those safeguard provisions as directed by the Secretary of the Treasury, upon the advice and recommendation of the Chairman of the Committee.

SEC. 4. *Publication of Proposed Rules regarding Technical Regulations and Sanitary and Phytosanitary Measures.* (a) In accordance with Articles 718 and 909 of the NAFTA, each agency subject to the provisions of the Administrative Procedure Act, as amended (5 U.S.C. 551 *et seq.*), shall, in applying section 553 of title 5, United States Code, with respect to any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application, other than a regulation issued pursuant to section 104(a) of the NAFTA Implementation Act [19 U.S.C. 3314(a)], publish or serve notice of such regulation or measure not less than 75 days before the comment due date, except:

(1) in the case of a technical regulation relating to perishable goods, in which case the agency shall, to the greatest extent practicable, publish or serve notice at least 30 days prior to adoption of such regulation;

(2) in the case of a technical regulation, where the United States considers it necessary to address an ur-

gent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers; or

(3) in the case of a sanitary or phytosanitary measure, where the United States considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection.

(b) For purposes of this section, the term ''sanitary or phytosanitary measure'' shall be defined in accordance with section 463 of the Trade Agreements Act of 1979 [19 U.S.C. 2575b], and ''technical regulation'' shall be defined in accordance with section 473 of the Trade Agreements Act of 1979 [19 U.S.C. 2576b].

(c) This section supersedes section 1 of Executive Order No. 12662 of December 31, 1988 [19 U.S.C. 2112 note].

SEC. 5. *Government Procurement Procedures.* (a) Waiver.

(1) With respect to eligible products (as defined in section 381(c) of the NAFTA Implementation Act [amending section 2518(4)(A) of this title]) of Canada and Mexico, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Federal Government procurement that would, if applied to such products or suppliers, result in treatment less favorable than the most favorable treatment accorded:

(A) to United States products and services and suppliers of such products and services; or

(B) to eligible products of either Mexico or Canada, shall be waived.

(2) This waiver shall be applied by all executive agencies listed in Annexes 1 and 2 of this Executive order in consultation with, and when deemed necessary at the direction of, the United States Trade Representative (Trade Representative).

(b) The Secretary of Defense, or his designee, in consultation with the Trade Representative, shall be responsible for determinations under Article 1018(1), pursuant to Annex 1001.1b-1(A)(4), of the NAFTA. The Secretary of Defense, or his designee, and the Trade Representative shall establish procedures for this purpose.

(c) The executive agencies listed in Annex 2 are directed to procure eligible products in compliance with the procedural provisions of Chapter 10 of the NAFTA.

(d) The Trade Representative shall be responsible for calculating and adjusting the threshold as required by Article 1001(1)(c) of the NAFTA.

(e) This order shall apply only to solicitations issued on or after the date of entry into force of the NAFTA for the United States.

(f) Although regulatory implementation of this order must await revisions to the Federal Acquisitions Regulation (FAR), it is expected that agencies listed in Annexes 1 and 2 of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

(g) Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302, 1303], the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

SEC. 6. *Government Use of Patented Technology.* (a) Each agency shall, within 30 days from the date this order is issued, modify or adopt procedures to ensure compliance with Article 1709(10) of the NAFTA regarding notice when patented technology is used by or for the Federal Government without a license from the owner, except that the requirement of Article 1709(10)(b) regarding reasonable efforts to obtain advance authorization from the patent owner:

(1) is hereby waived for an invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid United States patent is or will be used or manufactured without a license; and

(2) is waived whenever a national emergency or other circumstances of extreme urgency exists, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(b) Agencies shall treat the term ''remuneration'' as used in Articles 1709(10)(h) and (j) and 1715 of the NAFTA as equivalent to ''reasonable and entire compensation'' as used in section 1498 of title 28, United States Code.

(c) In addition to the general provisions of section 7 of this order regarding enforceable rights, nothing in this order is intended to suggest that the giving of notice to a patent owner under Article 1709(10) of the NAFTA constitutes an admission that the Federal Government has infringed a valid privately-owned patent.

SEC. 7. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 8. *Effective Date.* This order shall take effect upon the date of entry into force of the NAFTA for the United States.

WILLIAM J. CLINTON.

ANNEX 1

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
United States Agency for International Development
General Services Administration
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION Agency
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administrative Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
Peace Corps

National Archives and Records Administration

ANNEX 2

The Power Marketing Administrations of the Department of Energy
Tennessee Valley Authority
St. Lawrence Seaway Development Corporation
[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]
[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

§ 3312. Relationship of Agreement to United States and State law

(a) Relationship of Agreement to United States law

(1) United States law to prevail in conflict

No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) Construction

Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, including any law regarding—

(i) the protection of human, animal, or plant life or health,

(ii) the protection of the environment, or

(iii) motor carrier or worker safety; or

(B) to limit any authority conferred under any law of the United States, including section 2411 of this title;

unless specifically provided for in this Act.

(b) Relationship of Agreement to State law

(1) Federal-State consultation

(A) In general

On December 8, 1993, the President shall, through the intergovernmental policy advisory committees on trade established under section 2114c(2)(A) of this title, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.

(B) Federal-State consultation process

The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which—

(i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;

(ii) the States will be informed on a continuing basis of matters under the Agreement that directly relate to, or will potentially have a direct impact on, the States;

(iii) the States will be provided opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (ii);

(iv) the Trade Representative will take into account the information and advice received from the States under clause (iii) when formulating United States positions regarding matters referred to in clause (ii); and

(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States) to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working groups established under the Agreement or through dispute settlement processes provided for under the Agreement.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal-State consultation process established by this paragraph.

(2) Legal challenge

No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(3) "State law" defined

For purposes of this subsection, the term ''State law'' includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) Effect of Agreement with respect to private remedies

No person other than the United States—

(1) shall have any cause of action or defense under—

(A) the Agreement or by virtue of Congressional approval thereof, or

(B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.

(Pub. L. 103–182, title I, §102, Dec. 8, 1993, 107 Stat. 2062.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North

American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF NAFTA STATUS

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

§ 3313. Consultation and layover requirements for, and effective date of, proclaimed actions

(a) Consultation and layover requirements

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 2155 of this title, and

(B) the International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor, and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) Effective date of certain proclaimed actions

Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover requirements under subsection (a) of this section may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(Pub. L. 103–182, title I, § 103, Dec. 8, 1993, 107 Stat. 2063.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Sept. 29, 1995, 60 F.R. 52061, provided:

Memorandum for the United States Trade Representative

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, you are hereby delegated the authority set forth in section 103(a) of the North American Free Trade Agreement Implementation Act (''NAFTA Act'') [19 U.S.C. 3313(a)] and section 115 of the Uruguay Round Agreements Act (''Uruguay Round Act'') [19 U.S.C. 3524] to perform certain functions in order to fulfill the consultation and layover requirements set forth in those provisions, including:

(1) obtaining advice from the appropriate advisory committees and the U.S. International Trade Commission on the proposed implementation of an action by Presidential proclamation;

(2) submitting a report on such action to the House Ways and Means and Senate Finance Committees; and

(3) consulting with such committees during the 60-day period following the date on which the requirements under (1) and (2) have been met.

The President retains the sole authority under the NAFTA Act [Pub. L. 103–182, see Tables for classification] and Uruguay Round Act [Pub. L. 103–465, see Tables for classification] to implement an action by proclamation after the consultation and layover requirements set forth in section 103(a)(1) through (4) and section 115 of such Acts, respectively, have been met.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

TERMINATION OF NAFTA STATUS

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

§ 3314. Implementing actions in anticipation of entry into force and initial regulations

(a) Implementing actions

After December 8, 1993—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 3313(b) of this title on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) Initial regulations

Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 3311(a)(2) of this title to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a

date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

(Pub. L. 103–182, title I, §104, Dec. 8, 1993, 107 Stat. 2064.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

TERMINATION OF NAFTA STATUS

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§ 3315. United States Section of NAFTA Secretariat

(a) Establishment of United States Section

The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 3432 of this title, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened under those chapters. The United States Section may not be considered to be an agency for purposes of section 552 of title 5.

(b) Authorization of appropriations

There are authorized to be appropriated for each fiscal year after fiscal year 1993 to the department or agency within which the United States Section is established the lesser of—

(1) such sums as may be necessary; or

(2) $2,000,000;

for the establishment and operations of the United States Section and for the payment of the United States share of the expenses, including food when sequestered, of binational panels and extraordinary challenge committees convened under chapter 19, and of the expenses incurred in dispute settlement proceedings under chapter 20, of the Agreement.

(c) Reimbursement of certain expenses

If, in accordance with Annex 2002.2 of the Agreement, the Canadian Section or the Mexican Section of the Secretariat provides funds to the United States Section during any fiscal year, as reimbursement for expenses by the Canadian Section or the Mexican Section in connection with settlement proceedings under chapter 19 or 20 of the Agreement, the United States Section may retain and use such funds to carry out the functions described in subsection (a) of this section.

(Pub. L. 103–182, title I, §105, Dec. 8, 1993, 107 Stat. 2064; Pub. L. 110–161, div. B, title I, §107, Dec. 26, 2007, 121 Stat. 1893.)

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–161, which directed the amendment of section 3315 of title 19, United States Code, by inserting '', including food when sequestered,'' after ''for the establishment and operations of the United States Section and for the payment of the United States share of the expenses'', was executed by making the substitution in the concluding provisions of this section, which is section 105 of Pub. L. 103–182, to reflect the probable intent of Congress.

TERMINATION OF NAFTA STATUS

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

ESTABLISHMENT OF UNITED STATES SECTION OF NAFTA SECRETARIAT

For establishment of United States Section of NAFTA Secretariat within Department of Commerce, see section 1 of Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

§ 3316. Appointments to chapter 20 panel proceedings

(a) Consultation

The Trade Representative shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the selection and appointment of candidates for the rosters described in article 2009 of the Agreement.

(b) Selection of individuals with environmental expertise

The United States shall, to the maximum extent practicable, encourage the selection of individuals who have expertise and experience in environmental issues for service in panel proceedings under chapter 20 of the Agreement to hear any challenge to a United States or State environmental law.

(Pub. L. 103–182, title I, §106, Dec. 8, 1993, 107 Stat. 2065.)

TERMINATION OF NAFTA STATUS

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

§ 3317. Congressional intent regarding future accessions

(a) In general

Section 3311(a) of this title may not be construed as conferring Congressional approval of the entry into force of the Agreement for the United States with respect to countries other than Canada and Mexico.

(b) Future free trade area negotiations

(1) Findings

The Congress makes the following findings:

(A) Efforts by the United States to obtain greater market opening through multilateral negotiations have not produced agreements that fully satisfy the trade negotiating objectives of the United States.

(B) United States trade policy should provide for additional mechanisms with which to pursue greater market access for United States exports of goods and services and opportunities for export-related investment by United States persons.

(C) Among the additional mechanisms should be a system of bilateral and multilateral trade agreements that provide greater market access for United States exports and opportunities for export-related investment by United States persons.

(D) The system of trade agreements can and should be structured to be consistent with, and complementary to, existing international obligations of the United States and ongoing multilateral efforts to open markets.

(2) Report on significant market opening

No later than May 1, 1994, and May 1, 1997, the Trade Representative shall submit to the President, and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the ''appropriate Congressional committees''), a report which lists those foreign countries—

(A) that—

(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is required by existing multilateral trade agreements or obligations; or

(ii) have made significant progress in opening their markets to United States exports of goods and services and export-related investment by United States persons; and

(B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.

(3) Presidential determination

The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.

(4) Recommendations on future free trade area negotiations

No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains—

(A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);

(B) with respect to each country selected, the specific negotiating objectives that are necessary to meet the objectives of the United States under this section; and

(C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.

(5) General negotiating objectives

The general negotiating objectives of the United States under this section are to obtain—

(A) preferential treatment for United States goods;

(B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;

(C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;

(D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;

(E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;

(F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is inconsistent with commercial considerations, purchasing by such firms of United States goods and services;

(G) adequate and effective protection of intellectual property rights of United States persons, and fair and equitable market access for United States persons that rely upon intellectual property protection;

(H) the elimination of foreign export and domestic subsidies that distort international trade in United States goods and services or cause material injury to United States industries;

(I) the elimination of all export taxes;

(J) the elimination of acts, policies, and practices which constitute export targeting; and

(K) monitoring and effective dispute settlement mechanisms to facilitate compliance with the matters described in subparagraphs (A) through (J).

(Pub. L. 103–182, title I, §108, Dec. 8, 1993, 107 Stat. 2066.)

SUBCHAPTER II—CUSTOMS PROVISIONS

§ 3331. Tariff modifications

(a) Tariff modifications provided for in Agreement

(1) Proclamation authority

The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 302, 305, 307, 308, and 703 and Annexes 302.2, 307.1, 308.1, 308.2, 300–B, 703.2, and 703.3 of the Agreement.

(2) Effect on Mexican GSP status

Notwithstanding section 502(f)(2) of the Trade Act of 1974 [19 U.S.C. 2462(f)(2)], the President shall terminate the designation of Mexico as a beneficiary developing country for purposes of title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] on the date of entry into force of the Agreement between the United States and Mexico.

(b) Other tariff modifications

(1) In general

Subject to paragraph (2) and the consultation and layover requirements of section 3313(a) of this title, the President may proclaim—

(A) such modifications or continuation of any duty,

(B) such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the Agreement,

(C) such continuation of duty-free or excise treatment, or

(D) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the Agreement.

(2) Special rule for articles with tariff phaseout periods of more than 10 years

The President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with respect to such article has been denied in the preceding 3 calendar years.

(c) Conversion to ad valorem rates for certain textiles

For purposes of subsections (a) and (b) of this section, with respect to an article covered by Annex 300–B of the Agreement imported from Mexico for which the base rate in the Schedule of the United States in Annex 300–B is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

(Pub. L. 103–182, title II, §201, Dec. 8, 1993, 107 Stat. 2068; Pub. L. 104–188, title I, §1954(a)(5), Aug. 20, 1996, 110 Stat. 1927.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (a)(2), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Act is classified generally to subchapter V (§2461 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–188 substituted ''502(f)(2) of the Trade Act of 1974'' for ''502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2))''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of this title.

EFFECTIVE DATE

Section 213 of Pub. L. 103–182 provided that:

''(a) PROVISIONS EFFECTIVE ON DATE OF ENACTMENT.—Section 212 [enacting provisions set out as a note under section 58c of this title] and this section take effect on the date of the enactment of this Act [Dec. 8, 1993].

''(b) PROVISIONS EFFECTIVE WHEN AGREEMENT ENTERS INTO FORCE.—Section 201, section 202, section 203(a), (d), and (e), section 210 and section 211, the amendment made by section 203(c), and the amendments made by sections 204 through 209 [enacting this section and sections 3332, 3333(a), (d), (e), 3334, and 3335 of this title and amending sections 58c, 1304, 1313, 1508, 1509, 1514, 1520, 1592, and 1628 of this title] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].

''(c) PROVISIONS WITH DELAYED EFFECTIVE DATES.—The amendments made by section 203(b) [amending sections 81c, 1311 to 1313, and 1562 of this title] apply—

''(1) with respect to exports from the United States to Canada—

''(A) on January 1, 1996, if Canada is a NAFTA country on that date, and

''(B) after such date for so long as Canada continues to be a NAFTA country; and

''(2) with respect to exports from the United States to Mexico—

''(A) on January 1, 2001, if Mexico is a NAFTA country on that date; and

''(B) after such date for so long as Mexico continues to be a NAFTA country.''

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

IMPLEMENTATION OF SAFEGUARD PROVISIONS FOR TEXTILE AND APPAREL GOODS

The Committee for the Implementation of Textile Agreements to implement safeguard provisions for textile and apparel goods pursuant to this section, see section 3 of Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

§ 3332. Rules of origin

(a) Originating goods

(1) In general

For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as otherwise provided in this section, a good originates in the territory of a NAFTA country if—

(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;

(B)(i) each nonoriginating material used in the production of the good—

(I) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or

(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and

(ii) the good satisfies all other applicable requirements of this section;

(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or

(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, does not undergo a change in tariff classification because—

(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or

(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or

(II) the subheading for the good provides for and specifically describes both the good itself and its parts.

(2) Special rules

(A) Foreign-trade zones

Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act [19 U.S.C. 81a et seq.]) that is entered for consumption in the customs territory of the United States.

(B) Regional value-content requirement

For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b) of this section, is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.

(b) Regional value-content

(1) In general

Except as provided in paragraph (5), the regional value-content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of—

(A) the transaction value method described in paragraph (2); or

(B) the net cost method described in paragraph (3).

(2) Transaction value method

(A) In general

An exporter or producer may calculate the regional value-content of a good on the basis of the following transaction value method:

$$\text{RVC} = \frac{\text{TV}-\text{VNM}}{\text{TV}} \times 100$$

(B) Definitions

For purposes of subparagraph (A):

(i) The term ''RVC'' means the regional value-content, expressed as a percentage.

(ii) The term ''TV'' means the transaction value of the good adjusted to a F.O.B. basis.

(iii) The term ''VNM'' means the value of nonoriginating materials used by the producer in the production of the good.

(3) Net cost method

(A) In general

An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC}-\text{VNM}}{\text{NC}} \times 100$$

(B) Definitions

For purposes of subparagraph (A):

(i) The term ''RVC'' means the regional value-content, expressed as a percentage.

(ii) The term ''NC'' means the net cost of the good.

(iii) The term ''VNM'' means the value of nonoriginating materials used by the producer in the production of the good.

(4) Value of nonoriginating materials used in originating materials

Except as provided in subsection (c)(1) of this section, and for a motor vehicle identified in subsection (c)(2) of this section or a component identified in Annex 403.2 of the Agreement, the value of nonoriginating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value-content of the good under paragraph (2) or (3), include the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

(5) Net cost method must be used in certain cases

An exporter or producer shall calculate the regional value-content of a good solely on the basis of the net cost method described in paragraph (3), if—

(A) there is no transaction value for the good;

(B) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;

(C) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;

(D) the good is—

(i) a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(ii) identified in Annex 403.1 or 403.2 of the Agreement and is for use in a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(iii) provided for in subheadings 6401.10 through 6406.10; or

(iv) a word processing machine provided for in subheading 8469.10.00;

(E) the exporter or producer chooses to accumulate the regional value-content of the good in accordance with subsection (d) of this section; or

(F) the good is designated as an intermediate material under paragraph (10) and is subject to a regional value-content requirement.

(6) Net cost method allowed for adjustments

If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method and a NAFTA country subsequently notifies the exporter or producer, during the course of a verification conducted in accordance with chapter 5 of the Agreement, that the transaction value of the good or the value of any material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may calculate the regional value-content of the good on the basis of the net cost method.

(7) Review of adjustment

Nothing in paragraph (6) shall be construed to prevent any review or appeal available in accordance with article 510 of the Agreement with respect to an adjustment to or a rejection of—

(A) the transaction value of a good; or

(B) the value of any material used in the production of a good.

(8) Calculating net cost

The producer may, consistent with regulations implementing this section, calculate the net cost of a good under paragraph (3), by—

(A) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and reasonably allocating the resulting net cost of those goods to the good;

(B) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the good; or

(C) reasonably allocating each cost that is part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(9) Value of material used in production

Except as provided in paragraph (11), the value of a material used in the production of a good—

(A) shall—

(i) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or

(ii) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and

(B) if not included under clause (i) or (ii) of subparagraph (A), shall include—

(i) freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) duties, taxes, and customs brokerage fees paid on the material in the territory of one or more of the NAFTA countries; and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(10) Intermediate material

Except for goods described in subsection (c)(1) of this section, any self-produced material, other than a component identified in Annex 403.2 of the Agreement, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value-content of the good under paragraph (2) or (3); provided that if the intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is used in the production of the intermediate material may be designated by the producer as an intermediate material.

(11) Value of intermediate material

The value of an intermediate material shall be—

(A) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to the intermediate material; or

(B) the aggregate of each cost that is part of the total cost incurred with respect to the intermediate material that can be reasonably allocated to that intermediate material.

(12) Indirect material

The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(c) Automotive goods

(1) Passenger vehicles and light trucks, and their automotive parts

For purposes of calculating the regional value-content under the net cost method for—

(A) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, or

(B) a good provided for in the tariff provisions listed in Annex 403.1 of the Agreement, that is subject to a regional value-content requirement and is for use as original equipment in the production of a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31,

the value of nonoriginating materials used by the producer in the production of the good shall be the sum of the values of all nonoriginating materials, determined in accordance with subsection (b)(9) of this section at the time the nonoriginating materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the territories of the NAFTA countries under the tariff provisions listed in Annex 403.1 of the Agreement and are used in the production of the good or that are used in the production of any material used in the production of the good.

(2) Other vehicles and their automotive parts

For purposes of calculating the regional value-content under the net cost method for a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00, or a component identified in Annex 403.2 of the Agreement for use as original equipment in the production of the motor vehicle, the value of nonoriginating materials used by the producer in the production of the good shall be the sum of—

(A) for each material used by the producer listed in Annex 403.2 of the Agreement, whether or not produced by the producer, at the choice of the producer and determined in accordance with subsection (b) of this section, either—

(i) the value of such material that is nonoriginating, or

(ii) the value of nonoriginating materials used in the production of such material; and

(B) the value of any other nonoriginating material used by the producer that is not listed in Annex 403.2 of the Agreement determined in accordance with subsection (b) of this section.

(3) Averaging permitted

(A) In general

For purposes of calculating the regional value-content of a motor vehicle described in paragraph (1) or (2), the producer may average its calculation over its fiscal year, using any of the categories described in subparagraph (B), on the basis of either all motor vehicles in the category or on the basis of only the motor vehicles in the category that are exported to the territory of one or more of the other NAFTA countries.

(B) Category described

A category is described in this subparagraph if it is—

(i) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a NAFTA country;

(ii) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(iii) the same model line of motor vehicles produced in the territory of a NAFTA country; or

(iv) if applicable, the basis set out in Annex 403.3 of the Agreement.

(4) Annex 403.1 and Annex 403.2

For purposes of calculating the regional value-content for any or all goods provided for in a tariff provision listed in Annex 403.1 of the Agreement, or a component or material identified in Annex 403.2 of the Agreement, produced in the same plant, the producer of the good may—

(A) average its calculation—

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(B) calculate the average referred to in subparagraph (A) separately for any or all goods sold to one or more motor vehicle producers; or

(C) with respect to any calculation under this paragraph, make a separate calculation for goods that are exported to the territory of one or more NAFTA countries.

(5) Phase-in of regional value-content requirement

Notwithstanding Annex 401 of the Agreement, and except as provided in paragraph (6), the regional value-content requirement shall be—

(A) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 56 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 62.5 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31; and

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40, that is for use in a motor vehicle identified in clause (i); and

(B) for a producer's fiscal year beginning on the day closest to January 1, 1998, and

thereafter, 55 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 60 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00;

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40 that is for use in a motor vehicle identified in clause (i); and

(iii) except for a good identified in subparagraph (A)(ii) or a good provided for in subheadings 8482.10 through 8482.80, or subheading 8483.20 or 8483.30, a good identified in Annex 403.1 of the Agreement that is subject to a regional value-content requirement and is for use in a motor vehicle identified in subparagraph (A)(i) or (B)(i).

(6) New and refitted plants

The regional value-content requirement for a motor vehicle identified in paragraph (1) or (2) shall be—

(A) 50 percent for 5 years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if—

(i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries;

(ii) the plant consists of a new building in which the motor vehicle is assembled; and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(B) 50 percent for 2 years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, different from that assembled by the motor vehicle assembler in the plant before the refit.

(7) Election for certain vehicles from Canada

In the case of goods provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, exported from Canada directly to the United States, and entered on or after January 1, 1989, and before the date of entry into force of the Agreement between the United States and Canada, an importer may elect to use the rules of origin set out in this section in lieu of the rules of origin contained in section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) and may elect to use the method for calculating the value of nonoriginating materials established in article 403(2) of the Agreement in lieu of the method established in article 403(1) of the Agreement for purposes of determining eligibility for preferential duty treatment under the United States-Canada Free-Trade Agreement. Any election under this paragraph shall be made in writing to the Customs Service not later than the date that is 180 days after the date of entry into force of the Agreement between the United States and Canada. Any such election may be made only if the liquidation of such entry has not become final. For purposes of averaging the calculation of regional value-content for the goods covered by such entry, where the producer's 1989–1990 fiscal year began after January 1, 1989, the producer may include the period between January 1, 1989, and the beginning of its first fiscal year after January 1, 1989, as part of fiscal year 1989–1990.

(d) Accumulation

(1) Determination of originating good

For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the NAFTA countries by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of any of the NAFTA countries by that exporter or producer, if—

(A) all nonoriginating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401 of the Agreement;

(B) the good satisfies any applicable regional value-content requirement; and

(C) the good satisfies all other applicable requirements of this section.

The requirements of subparagraphs (A) and (B) must be satisfied entirely in the territory of one or more of the NAFTA countries.

(2) Treatment as single producer

For purposes of subsection (b)(10) of this section, the production of a producer that chooses to accumulate its production with that of other producers under paragraph (1) shall be treated as the production of a single producer.

(e) De minimis amounts of nonoriginating materials

(1) In general

Except as provided in paragraphs (3), (4), (5), and (6), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo an applicable change in tariff classification (set out in Annex 401 of the Agreement) is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or

(B) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such nonoriginating materials is not more than 7 percent of the total cost of the good,

provided that the good satisfies all other applicable requirements of this section and, if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good.

(2) Goods not subject to regional value-content requirement

A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if—

(A)(i) the value of all nonoriginating materials used in the production of the good is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis; or

(ii) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all nonoriginating materials is not more than 7 percent of the total cost of the good; and

(B) the good satisfies all other applicable requirements of this section.

(3) Dairy products, etc.

Paragraph (1) does not apply to—

(A) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of a good provided for in chapter 4 of the HTS;

(B) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of—

(i) preparations for infants containing over 10 percent by weight of milk solids provided for in subheading 1901.10.00;

(ii) mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.00;

(iii) a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80;

(iv) a good provided for in heading 2105 or subheading 2106.90.05, or preparations containing over 10 percent by weight of milk solids provided for in subheading 2106.90.15, 2106.90.40, 2106.90.50, or 2106.90.65;

(v) a good provided for in subheading 2202.90.10 or 2202.90.20; or

(vi) animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.30;

(C) a nonoriginating material provided for in heading 0805 or subheadings 2009.11 through 2009.30 that is used in the production of—

(i) a good provided for in subheadings 2009.11 through 2009.30, or subheading 2106.90.16, or concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(ii) a good provided for in subheading 2202.90.30 or 2202.90.35, or fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2202.90.36;

(D) a nonoriginating material provided for in chapter 9 of the HTS that is used in the production of instant coffee, not flavored, provided for in subheading 2101.10.20;

(E) a nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in headings 1501 through 1508, or heading 1512, 1514, or 1515;

(F) a nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;

(G) a nonoriginating material provided for in chapter 17 of the HTS or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(H) a nonoriginating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 through 2208;

(I) a nonoriginating material used in the production of—

(i) a good provided for in subheading 7321.11.30;

(ii) a good provided for in subheading 8415.10, subheadings 8415.81 through 8415.83, subheadings 8418.10 through 8418.21, subheadings 8418.29 through 8418.40, subheading 8421.12 or 8422.11, subheadings 8450.11 through 8450.20, or subheadings 8451.21 through 8451.29;

(iii) trash compactors provided for in subheading 8479.89.60; or

(iv) a good provided for in subheading 8516.60.40; and

(J) a printed circuit assembly that is a nonoriginating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401 of the Agreement, places restrictions on the use of such nonoriginating material.

(4) Certain fruit juices

Paragraph (1) does not apply to a nonoriginating single juice ingredient provided for in heading 2009 that is used in the production of—

(A) a good provided for in subheading 2009.90, or concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(B) mixtures of fruit or vegetable juices, fortified with minerals or vitamins, provided for in subheading 2202.90.39.

(5) Goods provided for in chapters 1 through 27 of the HTS

Paragraph (1) does not apply to a nonoriginating material used in the production of a good provided for in chapters 1 through 27 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(6) Goods provided for in chapters 50 through 63 of the HTS

A good provided for in chapters 50 through 63 of the HTS, that does not originate because certain fibers or yarns used in the production of the component of the good that determines

the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 401 of the Agreement, shall be considered to be a good that originates if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(f) Fungible goods and materials

For purposes of determining whether a good is an originating good—

(1) if originating and nonoriginating fungible materials are used in the production of the good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in regulations implementing this section; and

(2) if originating and nonoriginating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in regulations implementing this section.

(g) Accessories, spare parts, or tools

(1) In general

Except as provided in paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be considered as originating goods if the good is an originating good, and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement.

(2) Conditions

Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) in any case in which the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools are taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) Indirect materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

(i) Packaging materials and containers for retail sale

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) Packing materials and containers for shipment

Packing materials and containers in which a good is packed for shipment shall be disregarded—

(1) in determining whether the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement; and

(2) in determining whether the good satisfies a regional value-content requirement.

(k) Transshipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) of this section if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.

***(l)* Nonqualifying operations**

A good shall not be considered to be an originating good merely by reason of—

(1) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(2) any production or pricing practice with respect to which it may be demonstrated, by a preponderance of evidence, that the object was to circumvent this section.

(m) Interpretation and application

For purposes of this section:

(1) The basis for any tariff classification is the HTS.

(2) Except as otherwise expressly provided, whenever in this section there is a reference to a heading or subheading such reference shall be a reference to a heading or subheading of the HTS.

(3) In applying subsection (a)(4) of this section, the determination of whether a heading or subheading under the HTS provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, the rules of interpretation, or notes of the HTS.

(4) In applying the Customs Valuation Code—

(A) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;

(B) the provisions of this section shall take precedence over the Customs Valuation Code to the extent of any difference; and

(C) the definitions in subsection (p) of this section shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference.

(5) All costs referred to in this section shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(n) Origin of automatic data processing goods

Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

(*o*) Special rule for certain agricultural products

Notwithstanding any other provision of this section, for purposes of applying a rate of duty to a good provided for in—

(1) heading 1202 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico,

(2) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 1202 used in the production of that good is not wholly obtained in the territory of Mexico, or

(3) subheading 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in subheading 1701.99 used in the production of that good is not a qualifying good,

such good shall be treated as a nonoriginating good and, for purposes of this subsection, the terms ''qualifying good'' and ''wholly obtained in the territory of'' have the meaning given such terms in paragraph 26 of section A of Annex 703.2 of the Agreement.

(p) Definitions

For purposes of this section—

(1) Class of motor vehicles

The term ''class of motor vehicles'' means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles designed for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00.

(B) Motor vehicles provided for in subheading 8701.10, or subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in subheadings 8703.21 through 8703.90.

(2) Customs Valuation Code

The term ''Customs Valuation Code'' means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.

(3) F.O.B.

The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) Fungible goods and fungible materials

The terms ''fungible goods'' and ''fungible materials'' mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(5) Generally Accepted Accounting Principles

The term ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information, and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices, or procedures.

(6) Goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries

The term ''goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries'' means—

(A) mineral goods extracted in the territory of one or more of the NAFTA countries;

(B) vegetable goods harvested in the territory of one or more of the NAFTA countries;

(C) live animals born and raised in the territory of one or more of the NAFTA countries;

(D) goods obtained from hunting, trapping, or fishing in the territory of one or more of the NAFTA countries;

(E) goods (such as fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA country and flying its flag;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with that NAFTA country and fly its flag;

(G) goods taken by a NAFTA country or a person of a NAFTA country from the seabed or beneath the seabed outside territorial waters, provided that a NAFTA country has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by a NAFTA country or a person of a NAFTA country and not processed in a country other than a NAFTA country;

(I) waste and scrap derived from—

(i) production in the territory of one or more of the NAFTA countries; or

(ii) used goods collected in the territory of one or more of the NAFTA countries, if such goods are fit only for the recovery of raw materials; and

(J) goods produced in the territory of one or more of the NAFTA countries exclusively from goods referred to in subparagraphs (A) through (I), or from their derivatives, at any stage of production.

(7) Identical or similar goods

The term ''identical or similar goods'' means ''identical goods'' and ''similar goods'', respec-

tively, as defined in the Customs Valuation Code.

(8) Indirect material

(A) The term ''indirect material'' means a good—

(i) used in the production, testing, or inspection of a good but not physically incorporated into the good, or

(ii) used in the maintenance of buildings or the operation of equipment associated with the production of a good,

in the territory of one or more of the NAFTA countries.

(B) When used for a purpose described in subparagraph (A), the following materials are among those considered to be indirect materials:

(i) Fuel and energy.

(ii) Tools, dies, and molds.

(iii) Spare parts and materials used in the maintenance of equipment and buildings.

(iv) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings.

(v) Gloves, glasses, footwear, clothing, safety equipment, and supplies.

(vi) Equipment, devices, and supplies used for testing or inspecting the goods.

(vii) Catalysts and solvents.

(viii) Any other goods that are not incorporated into the good, if the use of such goods in the production of the good can reasonably be demonstrated to be a part of that production.

(9) Intermediate material

The term ''intermediate material'' means a material that is self-produced, used in the production of a good, and designated pursuant to subsection (b)(10) of this section.

(10) Marque

The term ''marque'' means the trade name used by a separate marketing division of a motor vehicle assembler.

(11) Material

The term ''material'' means a good that is used in the production of another good and includes a part or an ingredient.

(12) Model line

The term ''model line'' means a group of motor vehicles having the same platform or model name.

(13) Motor vehicle assembler

The term ''motor vehicle assembler'' means a producer of motor vehicles and any related persons or joint ventures in which the producer participates.

(14) NAFTA country

The term ''NAFTA country'' means the United States, Canada or Mexico for such time as the Agreement is in force with respect to Canada or Mexico, and the United States applies the Agreement to Canada or Mexico.

(15) New building

The term ''new building'' means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical, and other utilities to house a complete vehicle assembly process.

(16) Net cost

The term ''net cost'' means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost.

(17) Net cost of a good

The term ''net cost of a good'' means the net cost that can be reasonably allocated to a good using one of the methods set out in subsection (b)(8) of this section.

(18) Nonallowable interest costs

The term ''nonallowable interest costs'' means interest costs incurred by a producer as a result of an interest rate that exceeds the applicable Federal Government interest rate for comparable maturities by more than 700 basis points, determined pursuant to regulations implementing this section.

(19) Nonoriginating good; nonoriginating material

The term ''nonoriginating good'' or ''nonoriginating material'' means a good or material that does not qualify as an originating good or material under the rules of origin set out in this section.

(20) Originating

The term ''originating'' means qualifying under the rules of origin set out in this section.

(21) Producer

The term ''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.

(22) Production

The term ''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

(23) Reasonably allocate

The term ''reasonably allocate'' means to apportion in a manner appropriate to the circumstances.

(24) Refit

The term ''refit'' means a plant closure, for purposes of plant conversion or retooling, that lasts at least 3 months.

(25) Related persons

The term ''related persons'' means persons specified in any of the following subparagraphs:

(A) Persons who are officers or directors of one another's businesses.

(B) Persons who are legally recognized partners in business.

(C) Persons who are employer and employee.

(D) Persons one of whom owns, controls, or holds 25 percent or more of the outstanding voting stock or shares of the other.

(E) Persons if 25 percent or more of the outstanding voting stock or shares of each of them is directly or indirectly owned, controlled, or held by a third person.

(F) Persons one of whom is directly or indirectly controlled by the other.

(G) Persons who are directly or indirectly controlled by a third person.

(H) Persons who are members of the same family.

For purposes of this paragraph, the term ''members of the same family'' means natural or adoptive children, brothers, sisters, parents, grandparents, or spouses.

(26) Royalties

The term ''royalties'' means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process. It does not include payments under technical assistance or similar agreements that can be related to specific services such as—

(A) personnel training, without regard to where performed; and

(B) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services.

(27) Sales promotion, marketing, and after-sales service costs

The term ''sales promotion, marketing, and after-sales service costs'' means the costs related to sales promotion, marketing, and after-sales service for the following:

(A) Sales and marketing promotion, media advertising, advertising and market research, promotional and demonstration materials, exhibits, sales conferences, trade shows, conventions, banners, marketing displays, free samples, sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information), establishment and protection of logos and trademarks, sponsorships, wholesale and retail restocking charges, and entertainment.

(B) Sales and marketing incentives, consumer, retailer, or wholesaler rebates, and merchandise incentives.

(C) Salaries and wages, sales commissions, bonuses, benefits (such as medical, insurance, and pension), traveling and living expenses, and membership and professional fees for sales promotion, marketing, and after-sales service personnel.

(D) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(E) Product liability insurance.

(F) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(G) Telephone, mail, and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(H) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers.

(I) Property insurance, taxes, utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(J) Payments by the producer to other persons for warranty repairs.

(28) Self-produced material

The term ''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good.

(29) Shipping and packing costs

The term ''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, but does not include the costs of preparing and packaging the good for retail sale.

(30) Size category

The term ''size category'' means with respect to a motor vehicle identified in subsection (c)(1)(A) of this section—

(A) 85 cubic feet or less of passenger and luggage interior volume;

(B) more than 85 cubic feet, but less than 100 cubic feet, of passenger and luggage interior volume;

(C) at least 100 cubic feet, but not more than 110 cubic feet, of passenger and luggage interior volume;

(D) more than 110 cubic feet, but less than 120 cubic feet, of passenger and luggage interior volume; and

(E) 120 cubic feet or more of passenger and luggage interior volume.

(31) Territory

The term ''territory'' means a territory described in Annex 201.1 of the Agreement.

(32) Total cost

The term ''total cost'' means all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.

(33) Transaction value

Except as provided in subsection (c)(1) or (c)(2)(A) of this section, the term ''transaction value'' means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3, and 4 of Article 8 of the Cus-

toms Valuation Code and determined without regard to whether the good or material is sold for export.

(34) Underbody

The term ''underbody'' means the floor pan of a motor vehicle.

(35) Used

The term ''used'' means used or consumed in the production of goods.

(q) Presidential proclamation authority

(1) In general

The President is authorized to proclaim, as a part of the HTS—

(A) the provisions set out in Appendix 6.A of Annex 300–B, Annex 401, Annex 403.1, Annex 403.2, and Annex 403.3, of the Agreement, and

(B) any additional subordinate category necessary to carry out this title[1] consistent with the Agreement.

(2) Modifications

Subject to the consultation and layover requirements of section 3313 of this title, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than the provisions of paragraph A of Appendix 6 of Annex 300–B and section XI of part B of Annex 401 of the Agreement; and

(B) a modified version of the definition of any term set out in subsection (p) of this section (and such modified version of the definition shall supersede the version in subsection (p) of this section), but only if the modified version reflects solely those modifications to the same term in article 415 of the Agreement that are agreed to by the NAFTA countries before December 8, 1994.

(3) Special rules for textiles

Notwithstanding the provisions of paragraph (2)(A), and subject to the consultation and layover requirements of section 3313 of this title, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement, and

(B) before December 8, 1994, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of Appendix 6.A of Annex 300–B and section XI of part B of Annex 401 of the Agreement.

(Pub. L. 103–182, title II, §202, Dec. 8, 1993, 107 Stat. 2069; Pub. L. 104–295, §21(a)(2), Oct. 11, 1996, 110 Stat. 3529; Pub. L. 105–206, title V, §5003(b)(4), July 22, 1998, 112 Stat. 790.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a)(2)(A), is act June 18, 1934, ch. 590, 48 Stat. 998, as amended, which is classified generally to chapter 1A (§81a et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsec. (c)(7), is section 202 of Pub. L. 100–449, which is set out in a note under section 2112 of this title.

This title, referred to in subsec. (q)(1)(B), is title II of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2068, which enacted this subchapter, amended sections 58c, 81c, 1304, 1311 to 1313, 1508, 1509, 1514, 1520, 1562, 1592, and 1628 of this title, and enacted provisions set out as notes under sections 58c, 1304, and 3331 of this title.

AMENDMENTS

1998—Subsec. (n). Pub. L. 105–206 struck out ''most-favored-nation'' before ''rate of duty''.

1996—Subsec. (m)(4)(C). Pub. L. 104–295, §21(a)(2)(A), substituted ''subsection (p)'' for ''subsection (*o*)''.

Subsec. (p)(18). Pub. L. 104–295, §21(a)(2)(B), substituted ''Federal Government'' for ''federal government''.

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§3333. Drawback

(a) "Good subject to NAFTA drawback" defined

For purposes of this Act and the amendments made by subsection (b) of this section, the term ''good subject to NAFTA drawback'' means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to a NAFTA country.

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good, and

(B) except for a good referred to in paragraph 12 of section A of Annex 703.2 of the Agreement that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.[1]

[1] See References in Text note below.

[1] See References in Text note below.

(3) A good—

(A) that is—

(i) deemed to be exported from the United States,

(ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or

(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and

(B) that is delivered—

(i) to a duty-free shop,

(ii) for ship's stores or supplies for ships or aircraft, or

(iii) for use in a project undertaken jointly by the United States and a NAFTA country and destined to become the property of the United States.

(4) A good exported to a NAFTA country for which a refund of customs duties is granted by reason of—

(A) the failure of the good to conform to sample or specification, or

(B) the shipment of the good without the consent of the consignee.

(5) A good that qualifies under the rules of origin set out in section 3332 of this title that is—

(A) exported to a NAFTA country,

(B) used as a material in the production of another good that is exported to a NAFTA country, or

(C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a NAFTA country.

(6) A good provided for in subheading 1701.11.02 of the HTS that is—

(A) used as a material, or

(B) substituted for by a good of the same kind and quality that is used as a material,

in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.01 or 1701.99.99 (relating to refined sugar).

(7) A citrus product that is exported to Canada.

(8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of—

(A) apparel, or

(B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture moving pads), 5811.00.20, or 5811.00.30 of the HTS,

that is exported to Canada and that is subject to Canada's most-favored-nation rate of duty upon importation into Canada.

Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.

(b), (c) Omitted

(d) Elimination of drawback for fees under section 624 of title 7

Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 624 of title 7 with respect to goods included under subsection (a) of this section that are exported to—

(1) Canada after December 31, 1995, for so long as it is a NAFTA country; or

(2) Mexico after December 31, 2000, for so long as it is a NAFTA country.

(e) Inapplicability to countervailing and antidumping duties

Nothing in this section or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

(Pub. L. 103–182, title II, § 203, Dec. 8, 1993, 107 Stat. 2086.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The amendments made by subsection (b) of this section, referred to in subsec. (a), are the amendments made by section 203(b) of Pub. L. 103–182 to sections 81c, 1311 to 1313, and 1562 of this title.

This title, referred to in subsec. (a)(2)(B), is title II of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2068, which enacted this subchapter, amended sections 58c, 81c, 1304, 1311 to 1313, 1508, 1509, 1514, 1520, 1562, 1592, and 1628 of this title, and enacted provisions set out as notes under sections 58c, 1304, and 3331 of this title.

This section or the amendments made by it, referred to in subsec. (e), is section 203 of Pub. L. 103–182, which enacted this section and amended sections 81c, 1311 to 1313, and 1562 of this title.

CODIFICATION

Section is comprised of section 203 of Pub. L. 103–182. Subsec. (b) of section 203 of Pub. L. 103–182 amended sections 81c, 1311 to 1313, and 1562 of this title. Subsec. (c) of section 203 of Pub. L. 103–182 amended section 1313 of this title.

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

§ 3334. Prohibition on drawback for television picture tubes

Notwithstanding any other provision of law, no customs duties may be refunded, waived, or reduced on color cathode-ray television picture tubes, including video monitor cathode-ray tubes (provided for in subheading 8540.11.00 of the HTS), that are nonoriginating goods under section 3332(p)(19) of this title and are—

(A) exported to a NAFTA country;

(B) used as a material in the production of other goods that are exported to a NAFTA country; or

(C) substituted for by goods of the same kind and quality used as a material in the production of other goods that are exported to a NAFTA country.

(Pub. L. 103–182, title II, § 210, Dec. 8, 1993, 107 Stat. 2099.)

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

§ 3335. Monitoring of television and picture tube imports

(a) Monitoring

Beginning on the date the Agreement enters into force with respect to the United States, the United States Customs Service shall, for a period of 5 years, monitor imports into the United States of articles described in subheading 8528.10 of the HTS from NAFTA countries and shall take action to exercise all rights of the United States under chapter 5 of the Agreement with respect to such imports. The United States Customs Service shall take appropriate action under chapter 5 of the Agreement with respect to such imports, including verifications to ensure that the rules of origin under the Agreement are fully complied with and that the duty drawback obligations contained in article 303 and Annex 303.8 of the Agreement are fully implemented and duties are correctly assessed.

(b) Report to Trade Representative

The United States Customs Service shall make the results of the monitoring and verification required by subsection (a) of this section available to the President and the Trade Representative. If, based on such information, the President has reason to believe that articles described in subheading 8540.11 of the HTS, intended for ultimate consumption in the United States, are entering the territory of a NAFTA country inconsistent with the provisions of the Agreement, or have been undervalued in a manner that may raise concerns under United States trade laws, the President shall promptly take such action as may be appropriate under all relevant provisions of the Agreement, including article 317 and chapter 20, and under applicable United States trade statutes.

(Pub. L. 103–182, title II, § 211, Dec. 8, 1993, 107 Stat. 2099.)

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

SUBCHAPTER III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

PART A—SAFEGUARDS

SUBPART 1—RELIEF FROM IMPORTS BENEFITING FROM AGREEMENT

§ 3351. Definitions

As used in this subpart:

(1) Canadian article

The term ''Canadian article'' means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Canada.

(2) Mexican article

The term ''Mexican article'' means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Mexico.

(Pub. L. 103–182, title III, § 301, Dec. 8, 1993, 107 Stat. 2100.)

REFERENCES IN TEXT

This subpart, referred to in text, was in the original ''this part'', meaning part 1 (§§ 301–308) of subtitle A of title III of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2100, which enacted this subpart and provisions set out as a note under section 2112 of this title, and amended provisions set out as a note under section 2112 of this title.

EFFECTIVE DATE

Section 318 of title III of Pub. L. 103–182 provided that: ''Except as provided in section 308(b) [enacting provisions set out as a note under section 2112 of this title], the provisions of this subtitle [subtitle A (§§ 301–318) of title III of Pub. L. 103–182, enacting this part and amending section 2252 of this title and provisions set out as a note under section 2112 of this title] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].''

§ 3352. Commencing of action for relief

(a) Filing of petition

(1) In general

A petition requesting action under this subpart for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the International Trade Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The International Trade Commission shall transmit a copy of any petition filed under this subsection to the Trade Representative.

(2) Provisional relief

An entity filing a petition under this subsection may request that provisional relief be

provided as if the petition had been filed under section 2252(a) of this title.

(3) Critical circumstances

An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated under subsection (b) of this section.

(b) Investigation and determination

Upon the filing of a petition under subsection (a) of this section, the International Trade Commission, unless subsection (d) of this section applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of—

(1) serious injury; or

(2) except in the case of a Canadian article, a threat of serious injury;

to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) Applicable provisions

The provisions of—

(1) paragraphs (1)(B), (3)[1] (except subparagraph (A)), and (4)[1] of subsection (b);

(2) subsection (c); and

(3) subsection (d),

of section 2252 of this title apply with respect to any investigation initiated under subsection (b) of this section.

(d) Articles exempt from investigation

No investigation may be initiated under this section with respect to—

(1) any Canadian article or Mexican article if import relief has been provided under this subpart with respect to that article; or

(2) any textile or apparel article set out in Appendix 1.1 of Annex 300–B of the Agreement.

(Pub. L. 103–182, title III, § 302, Dec. 8, 1993, 107 Stat. 2100.)

REFERENCES IN TEXT

Paragraphs (3) and (4) of subsection (b) of section 2252 of this title, referred to in subsec. (c)(1), were repealed and a new paragraph (3) was added by Pub. L. 103–465, title III, § 301(c), Dec. 8, 1994, 108 Stat. 4932.

§ 3353. International Trade Commission action on petition

(a) Determination

By no later than 120 days after the date on which an investigation is initiated under section 3352(b) of this title with respect to a petition, the International Trade Commission shall—

(1) make the determination required under that section; and

(2) if the determination referred to in paragraph (1) is affirmative and an allegation regarding critical circumstances was made under section 3352(a) of this title, make a determination regarding that allegation.

(b) Additional finding and recommendation if determination affirmative

If the determination made by the International Trade Commission under subsection (a) of this section with respect to imports of an article is affirmative, the International Trade Commission shall find, and recommend to the President in the report required under subsection (c) of this section, the amount of import relief that is necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission in the determination. The import relief recommended by the International Trade Commission under this subsection shall be limited to that described in section 3354(c) of this title.

(c) Report to President

No later than the date that is 30 days after the date on which a determination is made under subsection (a) of this section with respect to an investigation, the International Trade Commission shall submit to the President a report that shall include—

(1) a statement of the basis for the determination;

(2) dissenting and separate views; and

(3) any finding made under subsection (b) of this section regarding import relief.

(d) Public notice

Upon submitting a report to the President under subsection (c) of this section, the International Trade Commission shall promptly make public such report (with the exception of information which the International Trade Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) Applicable provisions

For purposes of this subpart, the provisions of paragraphs (1), (2), and (3) of section 1330(d) of this title shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 2252 of this title.

(Pub. L. 103–182, title III, § 303, Dec. 8, 1993, 107 Stat. 2101.)

§ 3354. Provision of relief

(a) In general

No later than the date that is 30 days after the date on which the President receives the report of the International Trade Commission containing an affirmative determination of the International Trade Commission under section 3353(a) of this title, the President, subject to subsection (b) of this section, shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission.

(b) Exception

The President is not required to provide import relief under this section if the President de-

[1] See References in Text note below.

termines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) Nature of relief

The import relief (including provisional relief) that the President is authorized to provide under this subpart is as follows:

(1) In the case of imports of a Canadian article—

(A) the suspension of any further reduction provided for under Annex 401.2 of the United States-Canada Free-Trade Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed on the article for the corresponding season occurring immediately before January 1, 1989.

(2) In the case of imports of a Mexican article—

(A) the suspension of any further reduction provided for under the United States Schedule to Annex 302.2 of the Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season immediately occurring before the date on which the Agreement enters into force.

(d) Period of relief

The import relief that the President is authorized to provide under this section may not exceed 3 years, except that, if a Canadian article or Mexican article which is the subject of the action—

(1) is provided for in an item for which the transition period of tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years; and

(2) the President determines that the affected industry has undertaken adjustment and requires an extension of the period of the import relief;

the President, after obtaining the advice of the International Trade Commission, may extend the period of the import relief for not more than 1 year, if the duty applied during the initial period of the relief is substantially reduced at the beginning of the extension period.

(e) Rate on Mexican articles after termination of import relief

When import relief under this subpart is terminated with respect to a Mexican article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 302.2 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 3352 of this title; and

(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 302.2; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 302.2 for the elimination of the tariff.

(Pub. L. 103–182, title III, §304, Dec. 8, 1993, 107 Stat. 2102.)

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§ 3355. Termination of relief authority

(a) General rule

Except as provided in subsection (b) of this section, no import relief may be provided under this subpart—

(1) in the case of a Canadian article, after December 31, 1998; or

(2) in the case of a Mexican article, after the date that is 10 years after the date on which the Agreement enters into force;

unless the article against which the action is taken is an item for which the transition period for tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years, in which case the period during which relief may be granted shall be the period of staged tariff elimination for that article.

(b) Exception

Import relief may be provided under this subpart in the case of a Canadian article or Mexican article after the date on which such relief would, but for this subsection, terminate under subsection (a) of this section, but only if the Government of Canada or Mexico, as the case may be, consents to such provision.

(Pub. L. 103–182, title III, §305, Dec. 8, 1993, 107 Stat. 2103.)

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§ 3356. Compensation authority

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 3354 of this title shall be treated as action taken under chapter 1 of title II of such Act [19 U.S.C. 2251 et seq.].

(Pub. L. 103–182, title III, § 306, Dec. 8, 1993, 107 Stat. 2104.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in text, is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

§ 3357. Submission of petitions

A petition for import relief may be submitted to the International Trade Commission under—

(1) this subpart;

(2) chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.]; or

(3) under both this subpart and such chapter 1 at the same time, in which case the International Trade Commission shall consider such petitions jointly.

(Pub. L. 103–182, title III, § 307, Dec. 8, 1993, 107 Stat. 2104.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in pars. (2) and (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

§ 3358. Price-based snapback for frozen concentrated orange juice

(a) Trigger price determination

(1) In general

The Secretary shall determine—

(A) each period of 5 consecutive business days in which the daily price for frozen concentrated orange juice is less than the trigger price; and

(B) for each period determined under subparagraph (A), the first period occurring thereafter of 5 consecutive business days in which the daily price for frozen concentrated orange juice is greater than the trigger price.

(2) Notice of determinations

The Secretary shall immediately notify the Commissioner of Customs and publish notice in the Federal Register of any determination under paragraph (1), and the date of such publication shall be the determination date for that determination.

(b) Imports of Mexican articles

Whenever after any determination date for a determination under subsection (a)(1)(A) of this section, the quantity of Mexican articles of frozen concentrated orange juice that is entered exceeds—

(1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002; or

(2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007;

the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable limitation in paragraph (1) or (2) is reached and before the determination date for the related determination under subsection (a)(1)(B) of this section shall be the rate of duty specified in subsection (c) of this section.

(c) Rate of duty

The rate of duty specified for purposes of subsection (b) of this section for articles entered on any day is the rate in the HTS that is the lower of—

(1) the column 1 general rate of duty in effect for such articles on July 1, 1991; or

(2) the column 1 general rate of duty in effect on that day.

(d) Definitions

For purposes of this section—

(1) The term ''daily price'' means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange.

(2) The term ''business day'' means a day in which contracts for frozen concentrated orange juice are being traded on the New York Cotton Exchange, or any successor as determined by the Secretary.

(3) The term ''entered'' means entered or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term ''frozen concentrated orange juice'' means all products classifiable under subheading 2009.11.00 of the HTS.

(5) The term ''Secretary'' means the Secretary of Agriculture.

(6) The term ''trigger price'' means the average daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

(Pub. L. 103–182, title III, § 309, Dec. 8, 1993, 107 Stat. 2105; Pub. L. 104–295, § 21(b)(4), Oct. 11, 1996, 110 Stat. 3530.)

AMENDMENTS

1996—Subsec. (c)(1), (2). Pub. L. 104–295 substituted ''column 1 general'' for ''column 1–General''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Sec-

retary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBPART 2—RELIEF FROM IMPORTS FROM ALL COUNTRIES

§ 3371. NAFTA article impact in import relief cases under Trade Act of 1974

(a) In general

If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether—

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

(b) Factors

(1) Substantial import share

In determining whether imports from a NAFTA country, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period.

(2) Application of "contribute importantly" standard

In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, or threat thereof, the International Trade Commission shall consider such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries. In applying the preceding sentence, imports from a NAFTA country or countries normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

(c) "Contribute importantly" defined

For purposes of this section and section 3372(a) of this title, the term ''contribute importantly'' refers to an important cause, but not necessarily the most important cause.

(Pub. L. 103–182, title III, § 311, Dec. 8, 1993, 107 Stat. 2106.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (a), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

§ 3372. Presidential action regarding NAFTA imports

(a) In general

In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] with respect to imports from a NAFTA country, the President shall determine whether—

(1) imports from such country, considered individually, account for a substantial share of total imports; or

(2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, found by the International Trade Commission.

(b) Exclusion of NAFTA imports

In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the President shall exclude from such action imports from a NAFTA country if the President makes a negative determination under subsection (a)(1) or (2) of this section with respect to imports from such country.

(c) Action after exclusion of NAFTA country imports

(1) In general

If the President, under subsection (b) of this section, excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action—

(A) the President may take appropriate action under such chapter 1 to include those imports in the action; and

(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.

(2) Investigation

Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.

(3) "Surge" defined

For purposes of this subsection, the term ''surge'' means a significant increase in imports over the trend for a recent representative base period.

(d) Condition applicable to quantitative restrictions

Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article, with allowance for reasonable growth.

(Pub. L. 103–182, title III, § 312, Dec. 8, 1993, 107 Stat. 2107.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsecs. (a) to (c), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

SUBPART 3—GENERAL PROVISIONS

§ 3381. Monitoring

For purposes of expediting an investigation concerning provisional relief under this part or section 2252 of this title regarding—

(1) fresh or chilled tomatoes provided for in subheading 0702.00.00 of the HTS; and

(2) fresh or chilled peppers, other than chili peppers provided for in subheading 0709.60.00 of the HTS;

the International Trade Commission, until January 1, 2009, shall monitor imports of such goods as if proper requests for such monitoring had been made under subsection (d)(1)(C)(i) of section 2252 of this title. At the request of the International Trade Commission, the Secretary of Agriculture and the Commissioner of Customs shall provide to the International Trade Commission information relevant to the monitoring carried out under this section.

(Pub. L. 103–182, title III, § 316, Dec. 8, 1993, 107 Stat. 2108; Pub. L. 104–295, § 21(b)(3), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle A (§§ 301–318) of title III of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2100, which enacted this part, amended section 2252 of this title, enacted provisions set out as notes under sections 2112 and 3351 of this title, and amended provisions set out as a note under section 2112 of this title.

AMENDMENTS

1996—Pub. L. 104–295 substituted ''subsection (d)(1)(C)(i) of section 2252'' for ''section 2252(d)(1)(C)(i) of section 2252''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 3382. Procedures concerning conduct of International Trade Commission investigations

The International Trade Commission shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement.

(Pub. L. 103–182, title III, § 317(a), Dec. 8, 1993, 107 Stat. 2108.)

PART B—AGRICULTURE

§ 3391. Agriculture

(a) Omitted

(b) Section 624 of title 7

(1) In general

The President may, pursuant to article 309 and Annex 703.2 of the Agreement, exempt from any quantitative limitation or fee imposed pursuant to section 624 of title 7 any article which originates in Mexico, if Mexico is a NAFTA country.

(2) Qualification of articles

The determination of whether an article originates in Mexico shall be made in accordance with section 3332 of this title, except that operations performed in, or materials obtained from, any country other than the United States or Mexico shall be treated as if performed in or obtained from a country other than a NAFTA country.

(c) Tariff rate quotas

In implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

(d) Peanuts

(1) Effect of the Agreement

(A) In general

Nothing in the Agreement or this Act reduces or eliminates—

(i) any penalty required under section 1359a(d)[1] of title 7; or

(ii) any requirement under Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts, on peanuts in the domestic market, pursuant to section 1445c–3(f)[1] of title 7.

(B) Omitted

(2) Consultations on imports

It is the sense of Congress that the United States should request consultations in the Working Group on Emergency Action, established in the Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight—Emergency Action, if imports of peanuts exceed the in-quota quantity under a tariff rate quota set out in the United States Schedule to Annex 302.2 of the Agreement concerning whether—

(A) the increased imports of peanuts constitute a substantial cause of, or contribute

[1] See References in Text note below.

importantly to, serious injury, or threat of serious injury, to the domestic peanut industry; and

(B) recourse under Chapter Eight of the Agreement or Article XIX of the General Agreement on Tariffs and Trade is appropriate.

(e) Fresh fruits, vegetables, and cut flowers

(1) In general

The Secretary of Agriculture shall collect and compile the information specified under paragraph (3), if reasonably available, from appropriate Federal departments and agencies and the relevant counterpart ministries of the Government of Mexico.

(2) Designation of an office

The Secretary of Agriculture shall designate an office within the United States Department of Agriculture to be responsible for maintaining and disseminating, in a timely manner, the data accumulated for verifying citrus, fruit, vegetable, and cut flower trade between the United States and Mexico. The information shall be made available to the public and the NAFTA Agriculture Committee Working Groups.

(3) Information collected

The information to be collected, if reasonably available, includes—

(A) monthly fresh fruit, fresh vegetable, fresh citrus, and processed citrus product import and export data;

(B) monthly citrus juice production and export data;

(C) data on inspections of shipments of citrus, vegetables, and cut flowers entering the United States from Mexico; and

(D) in the case of fruits, vegetables, and cut flowers entering the United States from Mexico, data regarding—

(i) planted and harvested acreage; and

(ii) wholesale prices, quality, and grades.

(f) End-use certificates

(1) In general

The Secretary of Agriculture (referred to in this subsection as the ''Secretary'') shall implement, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into, or the withdrawal from a warehouse for consumption in, the customs territory of the United States—

(A) of any wheat that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of wheat that is a product of the United States (referred to in this subsection as ''United States-produced wheat''); and

(B) of any barley that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of barley that is a product of the United States (referred to in this subsection as ''United States-produced barley'').

(2) Regulations

The Secretary shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as may be necessary and appropriate to carry out this subsection.

(3) Producer protection determination

At any time after the effective date of the requirements established under paragraph (1), the Secretary may, subject to paragraph (5), suspend the requirements when making a determination, after consultation with domestic producers, that the program implemented under this subsection has directly resulted in—

(A) the reduction of income to the United States producers of agricultural commodities; or

(B) the reduction of the competitiveness of United States agricultural commodities in the world export markets.

(4) Suspension of requirements

(A) Wheat

If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced wheat as of the effective date of the requirement under paragraph (1)(A) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(A) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(B) Barley

If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced barley as of the effective date of the requirement under paragraph (1)(B) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(B) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(5) Report to Congress

The Secretary shall not suspend the requirements established under paragraph (1) under circumstances identified in paragraph (3) before the Secretary submits a report to Congress detailing the determination made under paragraph (3) and the reasons for making the determination.

(6) Compliance

It shall be a violation of section 1001 of title 18 for a person to engage in fraud or knowingly violate this subsection or a regulation implementing this subsection.

(7) Effective date

This subsection shall become effective on the date that is 120 days after December 8, 1993.

(g) Omitted

(h) Assistance for affected farmworkers

(1) In general

Subject to paragraph (3), if at any time the Secretary of Agriculture determines that the implementation of the Agreement has caused low-income migrant or seasonal farmworkers to lose income, the Secretary may make available grants, not to exceed $20,000,000 for any

fiscal year, to public agencies or private organizations with tax-exempt status under section 501(c)(3) of title 26, that have experience in providing emergency services to low-income migrant or seasonal farmworkers. Emergency services to be provided with assistance received under this subsection may include such types of assistance as the Secretary determines to be necessary and appropriate.

(2) "Low-income migrant or seasonal farmworker" defined

As used in this subsection, the term ''low-income migrant or seasonal farmworker'' shall have the same meaning as provided in section 5177a(b) of title 42.

(3) Authorization of appropriations

There are authorized to be appropriated $20,000,000 for each fiscal year to carry out this subsection.

(i) Biennial report on effects of Agreement on American agriculture

(1) In general

The Secretary of Agriculture shall prepare a biennial report on the effects of the Agreement on United States producers of agricultural commodities and on rural communities located in the United States.

(2) Contents of report

The report required under this subsection shall include—

(A) an assessment of the effects of implementing the Agreement on the various agricultural commodities affected by the Agreement, on a commodity-by-commodity basis;

(B) an assessment of the effects of implementing the Agreement on investments made in United States agriculture and on rural communities located in the United States;

(C) an assessment of the effects of implementing the Agreement on employment in United States agriculture, including any gains or losses of jobs in businesses directly or indirectly related to United States agriculture; and

(D) such other information and data as the Secretary determines appropriate.

(3) Submission of report

The Secretary shall furnish the report required under this subsection to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives. The report shall be due every 2 years and shall be submitted by March 1 of the year in which the report is due. The first report shall be due by March 1, 1997, and the final report shall be due by March 1, 2011.

(Pub. L. 103–182, title III, § 321, Dec. 8, 1993, 107 Stat. 2108.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1)(A), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, known as the North American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

Section 1359a of title 7, referred to in subsec. (d)(1)(A)(i), was repealed by Pub. L. 107–171, title I, § 1309(a)(1), May 13, 2002, 116 Stat. 179.

Section 1445c–3(f) of title 7, referred to in subsec. (d)(1)(A)(ii), was repealed by Pub. L. 104–127, title I, § 171(b)(2)(E), Apr. 4, 1996, 110 Stat. 938.

CODIFICATION

Section is comprised of section 321 of Pub. L. 103–182. Subsec. (a) of section 321 of Pub. L. 103–182 amended provisions set out as a note under section 2253 of this title. Subsec. (d)(1)(B) of section 321 of Pub. L. 103–182 amended section 1359a of Title 7, Agriculture. Subsec. (g) of section 321 of Pub. L. 103–182 amended provisions set out as a note under section 5622 of Title 7.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART C—TEMPORARY ENTRY OF BUSINESS PERSONS

§ 3401. Nonimmigrant traders and investors

Upon a basis of reciprocity secured by the Agreement, an alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Section B of Annex 1603 of the Agreement, but only if any such purpose shall have been specified in such Annex on the date of entry into force of the Agreement. For purposes of this section, the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of the Agreement.

(Pub. L. 103–182, title III, § 341(a), Dec. 8, 1993, 107 Stat. 2116.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

EFFECTIVE DATE

Section 342 of title III of Pub. L. 103–182 provided that: ''The provisions of this subtitle [subtitle D (§§ 341, 342) of title III of Pub. L. 103–182, enacting this section and amending section 1184 of Title 8, Aliens and Nationality] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].''

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

PART D—STANDARDS

SUBPART 1—STANDARDS AND MEASURES

§ 3411. Transportation

No regulation issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee established under article 913(5)(a)(i) of the Agreement may take effect before the date 90 days after the date of issuance.

(Pub. L. 103–182, title III, § 352, Dec. 8, 1993, 107 Stat. 2122.)

SUBPART 2—AGRICULTURAL STANDARDS

§ 3421. Agricultural standards

(a) to (f) Omitted

(g) Peanut butter and peanut paste

(1) In general

Except as provided in paragraph (2), all peanut butter and peanut paste in the United States domestic market shall be processed from peanuts that meet the quality standards established for peanuts under Marketing Agreement No. 146.

(2) Imports

Peanut butter and peanut paste imported into the United States shall comply with paragraph (1) or with sanitary measures that achieve at least the same level of sanitary protection.

(h) Animal health biocontainment facility

(1) Grant for construction

The Secretary of Agriculture shall make a grant to a land grant college or university described in paragraph (2) for the construction of a facility at the college or university for the conduct of research in animal health, disease-transmitting insects, and toxic chemicals that requires the use of biocontainment facilities and equipment. The facility to be constructed with the grant shall be known as the ''Southwest Regional Animal Health Biocontainment Facility''.

(2) Grant recipient described

To be eligible for the grant under paragraph (1), a land grant college or university must be—

(A) located in a State adjacent to the international border with Mexico; and

(B) determined by the Secretary of Agriculture to have an established program in animal health research and education and to have a collaborative relationship with one or more colleges of veterinary medicine or universities located in Mexico.

(3) Activities of the facility

The facility constructed using the grant made under paragraph (1) shall be used for conducting the following activities:

(A) The biocontainment facility shall offer the ability to organize multidisciplinary international teams working on basic and applied research on diagnostic method development and disease control strategies, including development of vaccines.

(B) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.

(C) The biocontainment facility shall allow academic institutions, governmental agencies, and the private sector to conduct research in basic and applied research biology, epidemiology, pathogenesis, host response, and diagnostic methods, on disease agents that threaten the livestock industries of the United States and Mexico.

(D) The biocontainment facility may be used to support research involving food safety, toxicology, environmental pollutants, radioisotopes, recombinant microorganisms, and selected naturally resistant or transgenic animals.

(4) Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subsection.

(i) Reports on inspection of imported meat, poultry, other foods, animals, and plants

(1) Definitions

As used in this subsection:

(A) Imports

The term ''imports'' means any meat, poultry, other food, animal, or plant that is imported into the United States in commercially significant quantities.

(B) Secretary

The term ''Secretary'' means the Secretary of Agriculture.

(2) In general

In consultation with representatives of other appropriate agencies, the Secretary shall prepare an annual report on the impact of the Agreement on the inspection of imports.

(3) Contents of reports

The report required under this subsection shall, to the maximum extent practicable, include a description of—

(A) the quantity or, with respect to the Customs Service, the number of shipments, of imports from a NAFTA country that are inspected at the borders of the United States with Canada and Mexico during the prior year;

(B) any change in the level or types of inspections of imports in each NAFTA country during the prior year;

(C) in any case in which the Secretary has determined that the inspection system of another NAFTA country is equivalent to the inspection system of the United States, the reasons supporting the determination of the Secretary;

(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year—

(i) at the borders of the United States with Mexico or Canada; or

(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;

(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;

(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;

(G) any incidence of transshipment of imports—

(i) that originate in a country other than a NAFTA country;

(ii) that are shipped to the United States through a NAFTA country during the prior year; and

(iii) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;

(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;

(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and

(J) any other information the Secretary determines to be appropriate.

(4) Frequency of reports

The Secretary shall submit—

(A) the initial report required under this subsection not later than January 31, 1995; and

(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.

(5) Report to Congress

The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 103–182, title III, § 361, Dec. 8, 1993, 107 Stat. 2122.)

CODIFICATION

Section is comprised of section 361 of Pub. L. 103–182. Subsecs. (a) to (f) of section 361 of Pub. L. 103–182 are classified as follows: subsec. (a) amended section 1582 of Title 7, Agriculture; subsec. (b) amended section 104 of Title 21, Food and Drugs; subsec. (c) amended section 105 of Title 21; subsec. (d) amended section 1306 of this title and section 281 of Title 7; subsec. (e) amended section 466 of Title 21; and subsec. (f) amended section 620 of Title 21.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

SUBCHAPTER IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

PART A—ORGANIZATIONAL, ADMINISTRATIVE, AND PROCEDURAL PROVISIONS REGARDING IMPLEMENTATION OF CHAPTER 19 OF AGREEMENT

§ 3431. References in part

Any reference in this part to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.

(Pub. L. 103–182, title IV, § 401, Dec. 8, 1993, 107 Stat. 2129.)

EFFECTIVE DATE

Section 416 of title IV of Pub. L. 103–182 provided that: ''The provisions of this title [enacting this subchapter, amending sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, and amending provisions set out as a note under section 2112 of this title] and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994], but shall not apply—

''(1) to any final determination described in paragraph (1)(B), or (2)(B)(i), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 [19 U.S.C. 1516a(a)(1)(B), (2)(B)(i), (ii), (iii)] notice of which is published in the Federal Register before such date, or to a determination described in paragraph (2)(B)(vi) of section 516A(a) of such Act notice of which is received by the Government of Canada or Mexico before such date; or

''(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.''

§ 3432. Organizational and administrative provisions

(a) Criteria for selection of individuals to serve on panels and committees

(1) In general

The selection of individuals under this section for—

(A) placement on lists prepared by the interagency group under subsection (c)(2)(B)(i) and (ii) of this section;

(B) placement on preliminary candidate lists under subsection (c)(3)(A) of this section;

(C) placement on final candidate lists under subsection (c)(4)(A) of this section;

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 and shall be made without regard to political affiliation.

(2) Additional criteria for roster placements and appointments under paragraph 1 of Annex 1901.2

Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b) of this section, appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges offer and are available to serve and such service is authorized by the chief judge of the court on which they sit.

(b) Selection of certain judges to serve on panels and committees

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.

(2) Consultation with chief judges

The Trade Representative shall consult, from time to time, with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D) of this section, the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.

(3) Submission of lists to Congress

The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final candidate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section.

(4) Appointment of judges to panels or committees

At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.

(c) Selection of other candidates

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) of this section applies.

(2) Interagency group

(A) Establishment

There is established within the interagency organization established under section 1872 of this title an interagency group which shall—

(i) be chaired by the Trade Representative; and

(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) Functions

The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19; and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;

(ii) if the Trade Representative makes a request under paragraph (4)(C)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;

(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 3315 of this title; and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.

(3) Preliminary candidate lists

(A) In general

The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (2)(B)(i) for placement on—

(i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and

(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.

(B) Submission of lists to Congressional Committees

(i) In general

No later than January 3 of each calendar year, the Trade Representative shall sub-

mit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the ''appropriate Congressional Committees'') the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.

(ii) Additional information

At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.

(C) Consultation

Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.

(D) Revision of lists

The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.

(4) Final candidate lists

(A) Submission of lists to Congressional Committees

No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.

(B) Finality of lists

Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(C) Amendment of lists

(i) In general

If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(I) request the interagency group established under paragraph (2)(A) to prepare a list of individuals who are qualified to be added to such candidate list;

(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and

(III) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).

(ii) Consultation with Congressional Committees

Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(iii) Adjustment of proposed amendment

The Trade Representative may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(iv) Final amendment

(I) In general

If the Trade Representative submits under clause (i)(III) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause (II), the individuals included in the final form of such amendment shall be added to the final candidate list.

(II) Inclusion of individuals

An individual may be included in the final form of an amendment submitted under subclause (I) only if such individ-

ual was included in the proposed form of such amendment or if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted to such Committees under subclause (I).

(III) Eligibility for service

Individuals added to a final candidate list under subclause (I) shall be eligible to serve on panels or committees convened under chapter 19 during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(IV) Finality of amendment

No additions may be made to the final form of an amendment described in subclause (I) after the final form of such amendment is submitted to the appropriate Congressional Committees under subclause (I).

(5) Treatment of responses

For purposes of applying section 1001 of title 18, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subsection (a)(1) of this section, shall be treated as matters within the jurisdiction of an agency of the United States.

(d) Selection and appointment

(1) Authority of Trade Representative

The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

that is to be made solely or jointly by the United States Government under the terms of the Agreement.

(2) Restrictions on selection and appointment

Except as provided in paragraph (3)—

(A) the Trade Representative may—

(i) select an individual for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 1-year period beginning on April 1 of any calendar year;

(ii) appoint an individual to serve as one of those members of any panel or committee convened under chapter 19 during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the United States Government; or

(iii) act to make a joint appointment with the Government of a NAFTA country, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under subsection (c)(4)(A) of this section during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I) of this section, or on the list submitted under subsection (b)(3) of this section to the Congressional Committees referred to in such subsection; and

(B) no individual may—

(i) be selected by the United States Government for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(ii) be appointed solely or jointly by the United States Government to serve as a member of a panel or committee convened under chapter 19;

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of subsection (a) of this section, and of subsection (b) or (c) of this section (as the case may be).

(3) Exceptions

Notwithstanding subsection (c)(3) of this section (other than subparagraph (B)), subsection (c)(4) of this section, or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) of this section may—

(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 3-month period beginning on the date on which the Agreement enters into force with respect to the United States; and

(B) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.

(e) Transition

If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994, the provisions of subsection (c) of this section shall be applied with respect to the calendar year in which such entering into force occurs—

(1) by substituting ''the date that is 30 days after the date on which the Agreement enters into force with respect to the United States'' for ''January 3 of each calendar year'' in subsections (c)(2)(B)(i) and (c)(3)(B)(i) of this section; and

(2) by substituting ''the date that is 3 months after the date on which the Agreement enters into force with respect to the United States'' for ''March 31 of each calendar year'' in subsection (c)(4)(A) of this section.

(f) Immunity

With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(g) Regulations

The administering authority under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.

(h) Report to Congress

At such time as the final candidate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section, the Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives, and to the Committee on Finance and the Committee on the Judiciary of the Senate, a report regarding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

(Pub. L. 103–182, title IV, § 402, Dec. 8, 1993, 107 Stat. 2129; Pub. L. 104–295, § 21(c)(1), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsec. (g), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–295 substituted ''subsection (c)(4) of this section'' for ''(c)(4)'' in introductory provisions.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

§ 3433. Testimony and production of papers in extraordinary challenges

(a) Authority of extraordinary challenge committee to obtain information

If an extraordinary challenge committee (hereafter in this section referred to as the ''committee'') is convened under paragraph 13 of article 1904, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 1904, for the purposes of carrying out its functions and duties under Annex 1904.13, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity;

(2) may summon witnesses, take testimony, and administer oaths;

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) of this section may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a) of this section, the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Mandamus

Any court referred to in subsection (b) of this section shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) Depositions

The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corpora-

tion, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

(Pub. L. 103–182, title IV, § 403, Dec. 8, 1993, 107 Stat. 2136.)

§ 3434. Requests for review of determinations by competent investigating authorities of NAFTA countries

(a) Definitions

As used in this section:

(1) Competent investigating authority

The term ''competent investigating authority'' means the competent investigating authority, as defined in article 1911, of a NAFTA country.

(2) United States Secretary

The term ''United States Secretary'' means that officer of the United States referred to in article 1908.

(b) Requests for review by United States

In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.

(c) Requests for review by person

In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.

(d) Service of request for review

Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.

(Pub. L. 103–182, title IV, § 404, Dec. 8, 1993, 107 Stat. 2137.)

§ 3435. Rules of procedure for panels and committees

(a) Rules of procedure for binational panels

The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews—

(1) requests for such reviews, complaints, other pleadings, and other papers;

(2) the amendment, filing, and service of such pleadings and papers;

(3) the joinder, suspension, and termination of such reviews; and

(4) other appropriate procedural matters.

(b) Rules of procedure for extraordinary challenge committees

The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.

(c) Rules of procedure for safeguarding panel review system

The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.

(d) Publication of rules

The rules prescribed under subsections (a), (b), and (c) of this section shall be published in the Federal Register.

(e) Administering authority

As used in this section, the term ''administering authority'' has the meaning given such term in section 1677(1) of this title.

(Pub. L. 103–182, title IV, § 405, Dec. 8, 1993, 107 Stat. 2137.)

§ 3436. Subsidy negotiations

In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include—

(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including—

(A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(B) the provision of goods or services at preferential rates;

(C) the granting of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and

(D) the assumption of any costs or expenses of manufacture, production, or distribution;

(2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

(3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.

(Pub. L. 103–182, title IV, § 406, Dec. 8, 1993, 107 Stat. 2138.)

§ 3437. Identification of industries facing subsidized imports

(a) Petitions

Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe—

(1) that—

(A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or

(B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and

(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned;

may file with the Trade Representative a petition that such industry be identified under this section.

(b) Identification of industry

Within 90 days after receipt of a petition under subsection (a) of this section, the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) of this section and the deterioration described in subsection (a)(2) of this section.

(c) Action after identification

At the request of an entity that is representative of an industry identified under subsection (b) of this section, the Trade Representative shall—

(1) compile and make available to the industry information under section 2418 of this title;

(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930 [19 U.S.C. 1332]; or

(3) take actions described in both paragraphs (1) and (2).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under paragraph (1) or (2), or both, as the case may be, until an agreement on more effective rules and disciplines relating to government subsidies is reached between the United States and the NAFTA countries.

(d) Initiation of action under other law

(1) In general

The Trade Representative and the Secretary of Commerce shall review information obtained under subsection (c) of this section and consult with the industry identified under subsection (b) of this section with a view to deciding whether any action is appropriate—

(A) under section 2411 of this title, including the initiation of an investigation under section 2412(c) of this title (in the case of the Trade Representative); or

(B) under subtitle A of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], including the initiation of an investigation under section 702(a) of that Act [19 U.S.C. 1671a(a)] (in the case of the Secretary of Commerce).

(2) Criteria for initiation

In determining whether to initiate any investigation under section 2411 of this title or any other trade law, other than title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the Trade Representative, after consultation with the Secretary of Commerce—

(A) shall seek the advice of the advisory committees established under section 2155 of this title;

(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(C) shall coordinate with the interagency organization established under section 1872 of this title; and

(D) may ask the President to request advice from the International Trade Commission.

(3) Title III actions

In the event an investigation is initiated under section 2412(c) of this title as a result of a review under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 2411(a) of this title, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.

(e) Effect of decisions

Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

(1) prejudice the right of any industry to file a petition under any trade law;

(2) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the International Trade Commission, or the Trade Representative pursuant to such a petition; or

(3) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 2411 of this title, title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any other trade law.

(f) Standing

Nothing in this section may be construed to alter in any manner the requirements in effect before December 8, 1993, for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

(Pub. L. 103–182, title IV, § 407, Dec. 8, 1993, 107 Stat. 2138; Pub. L. 104–295, § 21(c)(2), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (d)(1)(B), (2) and (e)(3), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of this title. Subtitle A of title VII of the Act is classified generally to part I (§ 1671 et seq.) of subtitle IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

AMENDMENTS

1996—Subsec. (e)(2). Pub. L. 104–295 substituted semicolon for comma after ''such a petition''.

§ 3438. Treatment of amendments to antidumping and countervailing duty law

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(1) section 303[1] or title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or successor statute, or

(B) indicates the standard of review to be applied,

shall apply to goods from a NAFTA country only to the extent specified in the amendment.

(Pub. L. 103–182, title IV, § 408, Dec. 8, 1993, 107 Stat. 2140.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in par. (1), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of this title. Section 303 of the Act was classified to section 1303 of this title and was repealed, effective Jan. 1, 1995, by Pub. L. 103–465, title II, § 261(a), Dec. 8, 1994, 108 Stat. 4908. For savings provisions and treatment of references to section 1303 in other laws, see section 261(b), (d)(1)(C) of Pub. L. 103–465, set out as notes under section 1303 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

APPLICATION OF AMENDMENTS BY PUBLIC LAW 103–465 TO GOODS FROM CANADA AND MEXICO

Pub. L. 103–465, title II, § 234, Dec. 8, 1994, 108 Stat. 4901, provided that: ''Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3438], the amendments made by this title [see Tables for classification] shall apply with respect to goods from Canada and Mexico.''

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

PART B—GENERAL PROVISIONS

§ 3451. Effect of termination of NAFTA country status

(a) In general

Except as provided in subsection (b) of this section, on the date on which a country ceases to be a NAFTA country, the provisions of this title[1] (other than this section) and the amendments made by this title[1] shall cease to have effect with respect to that country.

(b) Transition provisions

(1) Proceedings regarding protective orders and undertakings

If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 1677f(f) of this title or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 1677f(f) of this title.

(2) Binational panel and extraordinary challenge committee reviews

If on the date on which a country ceases to be a NAFTA country—

(A) a binational panel review under article 1904 of the Agreement is pending, or has been requested; or

(B) an extraordinary challenge committee review under article 1904 of the Agreement is pending, or has been requested;

with respect to a determination which involves a class or kind of merchandise and to which section 1516a(g)(2) of this title applies, such determination shall be reviewable under section 1516a(a) of this title. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 1516a(a) of this title shall not begin to run until the date on which the Agreement ceases to be in force with respect to that country.

(Pub. L. 103–182, title IV, § 415, Dec. 8, 1993, 107 Stat. 2148; Pub. L. 104–295, § 21(c)(4), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title IV of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2129, which enacted this subchapter, amended sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, enacted provisions set out as a note under section 3431 of this title, and amended provisions set out as a note under section 2112 of this title.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–295 substituted ''action under section 1516a(a)'' for ''action under 1516a(a)''.

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

PART A—PROVISIONS RELATING TO PERFORMANCE UNDER AGREEMENT

§ 3461. Discriminatory taxes

It is the sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the

[1] See References in Text note below.

[1] See References in Text note below.

terms of the Agreement. When such discriminatory enforcement adversely affects United States producers of goods or United States service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of such discriminatory enforcement, including invocation of the provisions of the Agreement.

(Pub. L. 103–182, title V, § 511, Dec. 8, 1993, 107 Stat. 2154.)

EFFECTIVE DATE

Section 516 of title V of Pub. L. 103–182 provided that: ''(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this subtitle [subtitle B (§§ 511–516) of title V of Pub. L. 103–182, enacting this part and section 2707 of this title, amending section 2242 of this title, and enacting provisions set out as a note under section 2707 of this title] shall take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].

''(b) EXCEPTION.—Section 515 [enacting section 2707 of this title and provisions set out as a note under section 2707 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1993].''

§ 3462. Review of operation and effects of Agreement

(a) Study

By not later than July 1, 1997, the President shall provide to the Congress a comprehensive study on the operation and effects of the Agreement. The study shall include an assessment of the following factors:

(1) The net effect of the Agreement on the economy of the United States, including with respect to the United States gross national product, employment, balance of trade, and current account balance.

(2) The industries (including agricultural industries) in the United States that have significantly increased exports to Mexico or Canada as a result of the Agreement, or in which imports into the United States from Mexico or Canada have increased significantly as a result of the Agreement, and the extent of any change in the wages, employment, or productivity in each such industry as a result of the Agreement.

(3) The extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the Agreement, and the effect on United States employment of such redirection.

(4) The extent of any increase in investment, including foreign direct investment and increased investment by United States investors, in new or existing production or other operations in the United States as a result of the Agreement, and the effect on United States employment of such investment.

(5) The extent to which the Agreement has contributed to—

(A) improvement in real wages and working conditions in Mexico,

(B) effective enforcement of labor and environmental laws in Mexico, and

(C) the reduction or abatement of pollution in the region of the United States-Mexico border.

(b) Scope

In assessing the factors listed in subsection (a) of this section, to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including—

(1) international competition,

(2) reductions in defense spending,

(3) the shift from traditional manufacturing to knowledge and information based economic activity, and

(4) the Federal debt burden.

(c) Recommendations of President

The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a) of this section.

(d) Recommendations of certain committees

The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

(Pub. L. 103–182, title V, § 512, Dec. 8, 1993, 107 Stat. 2155.)

REFERENCES IN TEXT

The North American Free Trade Agreement Implementation Act, referred to in subsec. (d), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

§ 3463. Report on impact of NAFTA on motor vehicle exports to Mexico

(a) Findings

The Congress makes the following findings:

(1) Trade in motor vehicles and motor vehicle parts is one of the most restricted areas of trade between the United States and Mexico.

(2) The elimination of Mexico's restrictive barriers to trade in motor vehicles and motor vehicle parts over a 10-year period under the Agreement should increase substantially United States exports of such products to Mexico.

(3) The Department of Commerce estimates that the Agreement provides the opportunity to increase United States exports of motor vehicles and motor vehicle parts by $1,000,000,000 during the first year of the Agreement's implementation with the potential for additional increases over the 10-year transition period.

(4) The United States automotive industry has estimated that United States exports of motor vehicles to Mexico should increase to more than 60,000 units during the first year of the Agreement's implementation, which is substantially above the current level of 4,000 units.

(b) Trade Representative report

No later than July 1, 1995, and annually thereafter through 1999, the Trade Representative shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on how effective the provisions of the Agreement are with respect to increasing United States exports of motor vehicles and motor vehicle parts to Mexico. Each report shall identify and determine the following:

(1) The patterns of trade in motor vehicles and motor vehicle parts between the United States and Mexico during the preceding 12-month period.

(2) The level of tariff and nontariff barriers that were in force during the preceding 12-month period.

(3) The amount by which United States exports of motor vehicles and motor vehicle parts to Mexico have increased from the preceding 12-month period as a result of the elimination of Mexican tariff and nontariff barriers under the Agreement.

(4) Whether any such increase in United States exports meets the levels of new export opportunities anticipated under the Agreement.

(5) If the anticipated levels of new United States export opportunities are not reached, what actions the Trade Representative is prepared to take to realize the benefits anticipated under the Agreement, including possible initiation of additional negotiations with Mexico for the purpose of seeking modifications of the Agreement.

(Pub. L. 103–182, title V, §514, Dec. 8, 1993, 107 Stat. 2157.)

PART B—IMPLEMENTATION OF NAFTA SUPPLEMENTAL AGREEMENTS

§ 3471. Agreement on Labor Cooperation

(a) Commission for Labor Cooperation

(1) Membership

The United States is authorized to participate in the Commission for Labor Cooperation in accordance with the North American Agreement on Labor Cooperation.

(2) Contributions to budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $2,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Labor Cooperation pursuant to Article 47 of the North American Agreement on Labor Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Definitions

As used in this section—

(1) the term ''Commission for Labor Cooperation'' means the commission established by Part Three of the North American Agreement on Labor Cooperation; and

(2) the term ''North American Agreement on Labor Cooperation'' means the North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

(Pub. L. 103–182, title V, §531, Dec. 8, 1993, 107 Stat. 2163.)

§ 3472. Agreement on Environmental Cooperation

(a) Commission for Environmental Cooperation

(1) Membership

The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.

(2) Contributions to budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Definitions

As used in this section—

(1) the term ''Commission for Environmental Cooperation'' means the commission established by Part Three of the North American Agreement on Environmental Cooperation; and

(2) the term ''North American Agreement on Environmental Cooperation'' means the North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

(Pub. L. 103–182, title V, §532, Dec. 8, 1993, 107 Stat. 2164.)

EX. ORD. NO. 12915. FEDERAL IMPLEMENTATION OF THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

Ex. Ord. No. 12915, May 13, 1994, 59 F.R. 25775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182; 107 Stat. 2057 (''NAFTA Implementation Act'') [see Tables for classification], and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. POLICY. (a) The North American Agreement on Environmental Cooperation (''Environmental

Cooperation Agreement'') shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Environmental Cooperation Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement (''NAFTA'') and the Environmental Cooperation Agreement.

(b) Effective implementation of the Environmental Cooperation Agreement is essential to the realization of the environmental objectives of NAFTA and the NAFTA Implementation Act and promotes cooperation on trade and environmental issues between the United States, Canada, and Mexico.

SEC. 2. IMPLEMENTATION OF THE ENVIRONMENTAL COOPERATION AGREEMENT.

(a) *Policy Priorities*. In accordance with Article 10(2) of the Environmental Cooperation Agreement, it is the policy of the United States to promote consideration of, with a view towards developing recommendations and reaching agreement on, the following priorities within the Council of the Commission for Environmental Cooperation (''Council''):

(1) pursuant to Article 10(2)(m), the environmental impact of goods throughout their life cycles, including the environmental effects of processes and production methods and the internalization of environmental costs associated with products from raw material to disposal;

(2) pursuant to Articles 10(2)(b), (g), (i), (j), and (k), pollution prevention techniques and strategies, transboundary and border environmental issues, the conservation and protection of wild flora and fauna (including endangered species), their habitats and specially protected natural areas, and environmental emergency preparedness and response activities;

(3) pursuant to Articles 10(3) and 10(4), implementation of Environmental Cooperation Agreement provisions and the exchange of information among the United States, Canada, and Mexico concerning the development, continuing improvement, and effective enforcement of, and compliance with, environmental laws, policies, incentives, regulations, and other applicable standards;

(4) pursuant to Article 10(5)(a), public access to environmental information held by public authorities of each party to the Environmental Cooperation Agreement, including information on hazardous materials and activities in its communities, and the opportunity to participate in decision-making processes related to such public access;

(5) pursuant to Article 10(2)(1), environmental matters as they relate to sustainable development; and

(6) other priorities as appropriate or necessary.

(b) *United States Representation on the Council*. The Administrator of the Environmental Protection Agency (''EPA'') shall be the representative of the United States on the Council. The policies and positions of the United States in the Council shall be coordinated through applicable interagency procedures.

(c) *Environmental Effects of the NAFTA*. Pursuant to Article 10(6)(d) of the Environmental Cooperation Agreement, the Administrator of the EPA shall work actively within the Council to consider on an ongoing basis the environmental effects of the NAFTA and review progress toward the objectives of the Environmental Cooperation Agreement.

(d) *Transparency and Public Participation*. The United States, as appropriate, shall endeavor to ensure the transparency and openness of, and opportunities for the public to participate in, activities under the Environmental Cooperation Agreement.

(1) To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat of the Commission for Environmental Cooperation (''Secretariat'') informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record.

(2) To the greatest extent practicable, the United States shall support public disclosure of all nonconfidential and nonproprietary elements of reports, factual records, decisions, recommendations, and other information gathered or prepared by the Commission for Environmental Cooperation (''Commission''). Where requested information is not made available, the United States shall endeavor to have the Commission state in writing to the public its reasons for denial of the request.

(3) The United States shall provide public notice of the opportunity to apply for inclusion on a roster of qualified individuals available to serve on arbitral panels under the Environmental Cooperation Agreement.

(4) The United States shall seek to ensure that the Model Rules of Procedure for dispute settlement established pursuant to Articles 28(1) and 28(2) of the Environmental Cooperation Agreement provide for the preparation of public versions of written submissions and arbitral reports not otherwise made publicly available, and for public access to arbitral hearings.

(5) Consistent with the Environmental Cooperation Agreement, the EPA Administrator shall develop procedures to inform the public of arbitral proceedings and Commission activities under the Environmental Cooperation Agreement, and to provide appropriate mechanisms for receiving public comment with respect to such arbitral proceedings and Commission activities involving the United States.

(6) As a disputing party, the United States shall seek to ensure, pursuant to Article 30 of the Environmental Cooperation Agreement, that the arbitral panels consult with appropriate experts for information and technical advice.

(e) *Consultation with States*. (1) Pursuant to Article 18 of the Environmental Cooperation Agreement, the EPA Administrator shall establish a governmental committee to furnish advice regarding implementation and further elaboration of the Agreement. Through this committee, or through other means as appropriate, the EPA Administrator and other relevant Federal agencies shall:

(A) inform the States on a continuing basis of matters under the Environmental Cooperation Agreement that directly relate to, or will potentially have a direct impact on, the States, including: (i) dispute settlement proceedings and other matters involving enforcement by the States of environmental laws; and (ii) implementation of the Environmental Cooperation Agreement, including Council, committee, and working group activities, in any area in which the States exercise concurrent or exclusive legislative, regulatory, or enforcement authority;

(B) provide the States with an opportunity to submit information and advice with respect to the matters identified in section 2(e)(1)(A) of this order; and

(C) involve the States to the greatest extent practicable at each stage of the development of United States positions regarding matters identified in section 2(e)(1)(A) of this order that will be addressed by the Council, committees, subcommittees, or working groups established under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement (including involvement through the inclusion of appropriate representatives of the States).

(2) When formulating positions regarding matters identified in section 2(e)(1)(A) of this order, the United States shall take into account the information and advice received from States.

(3) The United States, where appropriate, shall include representatives of interested States as Members of the United States delegations to the Council and other Commission bodies, including arbitral panels.

SEC. 3. NATIONAL ADVISORY COMMITTEE. The EPA Administrator shall utilize a National Advisory Committee as provided under Article 17 of the Environmental Cooperation Agreement.

SEC. 4. UNITED STATES CONTRIBUTIONS TO THE COMMISSION FOR ENVIRONMENTAL COOPERA-

TION. In accordance with section 532(a)(2) of the NAFTA Implementation Act [19 U.S.C. 3472(a)(2)], the EPA is designated as the agency authorized to make the contributions of the United States from funds available for such contributions to the annual budget of the Commission for Environmental Cooperation.

SEC. 5. JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 3473. Agreement on Border Environment Cooperation Commission

(a) Border Environment Cooperation Commission

(1) Membership

The United States is authorized to participate in the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement.

(2) Contributions to the Commission budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for fiscal year 1994 and each fiscal year thereafter for United States contributions to the budget of the Border Environment Cooperation Commission pursuant to section 7 of Article III of Chapter I of the Border Environment Cooperation Agreement. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Civil actions involving Commission

For the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located. Any such action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28.

(c) Definitions

As used in this section—

(1) the term ''Border Environment Cooperation Agreement'' means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;

(2) the terms ''Border Environment Cooperation Commission'' and ''Commission'' mean the commission established pursuant to Chapter I of the Border Environment Cooperation Agreement; and

(3) the term ''United States'' means the United States, its territories and possessions, and the Commonwealth of Puerto Rico.

(Pub. L. 103–182, title V, § 533, Dec. 8, 1993, 107 Stat. 2164.)

EX. ORD. NO. 12916. IMPLEMENTATION OF BORDER ENVIRONMENT COOPERATION COMMISSION AND NORTH AMERICAN DEVELOPMENT BANK

Ex. Ord. No. 12916, May 13, 1994, 59 F.R. 25779, as amended by Ex. Ord. No. 13380, June 17, 2005, 70 F.R. 35509, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182; 107 Stat. 2057 (''NAFTA Implementation Act'') [see Tables for classification], and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. The Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank, as amended by the Protocol of Amendment done at Washington and Mexico City, November 25 and 26, 2002 (''Agreement'') shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement and the Agreement.

SEC. 2. (a) The Secretary of State, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency shall be members of the Board of Directors of the Border Environment Cooperation Commission and the North American Development Bank (''Board'') as provided in clauses (1), (3), and (5) of article II in chapter III of the Agreement.

(b) Appointments to the Board under clauses (7) and (9) of article II in chapter III of the Agreement shall be made by the President. Individuals so appointed shall serve at the pleasure of the President.

(c) The Secretary of the Treasury is selected to be the Chairperson of the Board during any period in which the United States is to select the Chairperson under article III in chapter III of the Agreement.

(d) Except with respect to functions assigned by section 4, 5, 6, or 7 of this order, the Secretary of the Treasury shall coordinate with the Secretary of State, the Administrator of the Environmental Protection Agency, such other agencies and officers as may be appropriate, and the individuals appointed under subsection 2(b) as may be appropriate, the development of the policies and positions of the United States with respect to matters coming before the Board.

SEC. 3. For purposes of loans, guarantees, or grants endorsed by the United States for community adjustment and investment, the members of the Board listed in subsections 2(a) and (b) shall be instructed by the Secretary of the Treasury in accordance with procedures established by the Community Adjustment and

Investment Program Finance Committee established pursuant to section 7 of this order.

SEC. 4. The functions vested in the President by section 543(a)(1) of the NAFTA Implementation Act [22 U.S.C. 290m–2(a)(1)] are delegated to the Secretary of the Treasury.

SEC. 5. The functions vested in the President by section 543(a)(2) and (3) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury, who shall exercise such functions in accordance with the recommendations of the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

SEC. 6. The functions vested in the President by section 543(a)(5) and section 543(d) of the NAFTA Implementation Act are delegated to the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order, which shall exercise such functions in consultation with the Community Adjustment and Investment Program Advisory Committee (''Advisory Committee'') established pursuant to section 543(b) of the NAFTA Implementation Act.

SEC. 7. (a) There is hereby established a Community Adjustment and Investment Program Finance Committee (''Finance Committee'').

(b) The Finance Committee shall be composed of representatives from the Department of the Treasury, the Department of Agriculture, the Department of Housing and Urban Development, the Small Business Administration, and any other Federal agencies selected by the Chair of the Finance Committee to assist in carrying out the community adjustment and investment program pursuant to section 543(a)(3) of the NAFTA Implementation Act [22 U.S.C. 290m–2(a)(3)].

(c) The Department of the Treasury representative shall serve as Chair of the Finance Committee. The Chair shall be responsible for presiding over the meetings of the Finance Committee, ensuring that the views of all other members are taken into account, coordinating with other appropriate United States Government agencies in carrying out the community adjustment and investment program, and requesting meetings of the Advisory Committee pursuant to section 543(b)(4)(C) of the NAFTA Implementation Act.

SEC. 8. Any advice or conclusions of reviews provided to the President by the Advisory Committee pursuant to section 543(b)(3) of the NAFTA Implementation Act [22 U.S.C. 290m–2(b)(3)] shall be provided through the Finance Committee.

SEC. 9. Any summaries of public comments or conclusions of investigations and audits provided to the President by the ombudsman pursuant to section 543(c)(1) of the NAFTA Implementation Act shall be provided through the Finance Committee.

SEC. 10. The authority of the President under section 6 of Public Law 102–532; 7 U.S.C. 5404, to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency.

SEC. 11. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

CHAPTER 22—URUGUAY ROUND TRADE AGREEMENTS

Sec.

§ 3501. Definitions

For purposes of this Act:

(1) GATT 1947; GATT 1994

(A) GATT 1947

The term ''GATT 1947'' means the General Agreement on Tariffs and Trade, dated Octo-